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Counsel for Ironshore Specialty Insurance Company,  
formerly known as TIG Specialty Insurance Company

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In Re:

PURDUE PHARMA L.P., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

**Case No. 19-23649-rdd  
(Jointly Administered)**

**DECLARATION OF GEORGE CALHOUN IN SUPPORT OF SUPPLEMENTAL BRIEF  
IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY**

I, George R. Calhoun, V, hereby declare as follows:

1. I am a partner with Ifrah PLLC and represent Ironshore Specialty Insurance Company, formerly known as TIG Specialty Insurance Company (“TIG”) in the above-captioned

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnic Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors’ corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

action. I am providing this Declaration in support of TIG's Supplemental Brief in Support of its Motion for Relief from the Automatic Stay.

2. A true and accurate copy of a letter dated July 30, 2020, from Debtors' counsel to TIG's counsel is attached hereto as Exhibit A.

3. A true and accurate copy of a letter dated October 2, 2020, from Debtors' counsel to TIG's counsel is attached hereto as Exhibit B.

4. A true and accurate copy of the transcript for the January 20, 2021, hearing before this court is attached hereto as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2021.

/s/ George R. Calhoun

George R. Calhoun, V  
george@ifrahlaw.com

# Exhibit A



Ann Kramer  
Direct Phone: +1 212 205 6057  
Email: AKramer@ReedSmith.com

Reed Smith LLP  
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New York, NY 10022-7650  
+1 212 521 5400  
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reedsmith.com

**July 30, 2020**

**USPS Priority Mail Express & E-mail:**

**Kathleen\_DAndraia@trg.com**  
**newnotices@trg.com**

Claims Department  
Ironshore Specialty Insurance Company  
28 Liberty Street, 4th Floor  
New York, NY 10005

**Re: Insurance policies issued to Purdue Pharma L.P. and associated entities (collectively, “Purdue”) by Ironshore Specialty Insurance Company formerly known as TIG Specialty Insurance Company (“TIG”)**

Dear Sir or Ma’am:

As TIG is aware, Purdue has been named in numerous lawsuits, claims, subpoenas, and civil investigative demands (collectively, “claims”) in connection with the nationwide opioid crisis, including with regard to opioid drugs manufactured, marketed, and sold by Purdue and others. Certain of Purdue’s officers, directors, and employees also have been named in various proceedings in connection with the opioid crisis, may be named in additional proceedings, and face substantial liabilities in connection with these matters.

As of September 2019, Purdue and its officers, directors, and employees had been named in over 2,600 such claims across the United States, its territories, and Canada, brought by individuals, other private parties, and governmental entities. On September 16, 2019, Purdue filed for chapter 11 bankruptcy protection in response to these claims, and the bankruptcy process has been proceeding apace.

On March 4, 2020, United States Bankruptcy Judge Robert D. Drain ordered Purdue and creditor groups representing opioid claimants to mediate regarding how Purdue’s assets would be allocated in a plan of reorganization. *See Order Appointing Mediators, In re Purdue Pharma L.P., et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Docket no. 895.<sup>1</sup> Judge Drain appointed the Honorable Layn Phillips and Mr. Kenneth Feinberg to serve as co-mediators. The Bankruptcy Court established July 30 as the “bar date” for any and all potential creditors of Purdue to file “proofs of claim” asserting their right to a portion of Purdue’s assets. As of the evening of July 29, 2020, according to Prime Clerk, there have

<sup>1</sup> The creditor groups that are parties to the mediation include the following: the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants; the Ad Hoc Group of Non-Consenting States; the Multi-State Governmental Entities Group; the Official Committee of Unsecured Creditors; the Ad Hoc Committee of NAS Babies; the Ad Hoc Group of Hospitals; the Ad Hoc Group of Individual Victims; counsel for the Blue Cross Blue Shield Association, various third-party payors, and health insurance carrier plaintiffs; and the group of individual health insurance purchasers, represented by Stevens & Lee, P.C. *See id.* ¶4.

Claims Department  
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been approximately 82,000 “proofs of claim” filed. Additional proofs of claim will continue to be filed through the deadline.

It is likely that Purdue’s bankruptcy proceedings will result in the creation of an entity that will receive Purdue’s assets, including proceeds of insurance sold to Purdue, and will distribute those assets to Purdue’s creditors. In that regard, and as we are sure you are aware based on publicly available information, Purdue’s creditors’ demands exceed, by orders of magnitude, the limits of liability of Purdue’s insurance policies.

Purdue purchased a variety of insurance policies for many years from TIG that provide substantial coverage for liabilities that now are the subject of Purdue’s bankruptcy proceeding. Purdue previously has provided TIG with notice of claims, circumstances, or occurrences regarding these matters, and, as noted above, TIG also doubtless has seen extensive reporting of these claims in the press. For the avoidance of doubt, Purdue hereby confirms notice of these claims, circumstances, and occurrences under all of the policies and policy years in the attached list. *See Schedule of Insurance Policies attached as Exhibit A.* Purdue is seeking coverage with respect to all of its opioid-related liabilities under all of the policies and policy years in the attached list, as well as under all other policies issued or subscribed by TIG or any related insurer that provide or potentially provide coverage for Purdue’s opioid-related liabilities (collectively, the “Policies”).

We would like to discuss the resolution of TIG’s obligations under the Policies. To ensure that we can make substantive progress, the process we envision would include representatives of the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants, the Official Committee of Unsecured Creditors, and Purdue, as well as TIG’s representatives and principals. The Committees will coordinate with Purdue’s other governmental and non-governmental creditor groups to ensure that the creditors’ interests as a whole are broadly represented in our discussions. Given the current situation, we anticipate that video conferences will make the most sense.

We would like to begin these discussions as soon as possible, starting with an initial video conference in the next few days to talk about how best to proceed. I would be joined by one representative each of the Ad Hoc Committee and the Unsecured Creditors Committee. Please provide us with a few dates and times when you are available for such a conversation.

Notwithstanding anything contained in or omitted from this letter, Purdue reserves all of its rights with respect to the foregoing and all other matters, and does not waive anything.

We appreciate your prompt attention to and cooperation in this matter.

Very truly yours,

*Ann V. Kramer/s/*

Ann Kramer

AK:mb

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cc: Scott Gilbert, counsel to the Ad Hoc Committee of Governmental and Other Contingent  
Litigation Claimants (USPS Express Mail, [gilberts@gilberlegal.com](mailto:gilberts@gilberlegal.com), via email)  
Arik Preis, counsel to the Official Committee of Unsecured Creditors (USPS Express Mail,  
[apreis@akingump.com](mailto:apreis@akingump.com), via email)  
George R. Calhoun ([george@ifrahlaw.com](mailto:george@ifrahlaw.com), via email)

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**EXHIBIT A**

**SCHEDULE OF INSURANCE POLICIES**

<b>Current Insurer</b>	<b>Named Insurer In Policy</b>	<b>Policy Number</b>	<b>Policy Term</b>
Ironshore Specialty Insurance Company (“Ironshore”)	TIG Specialty Insurance Company	XEX 37690728/XLX38822 826	7/1/2001– 7/1/2002
Ironshore	TIG Specialty Insurance Company	XEX 37690728/XLX38822 826	7/1/2002– 10/1/2002

# Exhibit B



Ann Kramer  
Direct Phone: +1 212 205 6057  
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Reed Smith LLP  
599 Lexington Avenue  
New York, NY 10022-7650  
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reedsmith.com

October 2, 2020

**BY ELECTRONIC AND OVERNIGHT MAIL**

Christopher R. Carol  
Kennedy Law LLP  
120 Mountain View Boulevard  
P.O. Box 650  
Basking Ridge, NJ 07920  
Christopher.Carroll@kennedyslaw.com

**Re: Chapter 11 Bankruptcy Proceedings of Purdue Pharma L.P. and associated entities  
(collectively, “Purdue”)**

Dear Chris:

I am writing on behalf of the Debtors, the Official Committee of Unsecured Creditors (the “Official Committee”), and the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the “Ad Hoc Committee”). The purpose of this letter is to update TIG Specialty Insurance Company (n/k/a Ironshore Specialty Insurance Company) (“TIG”) on recent developments in Purdue’s bankruptcy proceedings and to request dates over the next couple of weeks to have an initial video call to kickstart discussions concerning a consensual resolution of TIG’s coverage obligations with respect to opioid-related claims against Purdue and its officers, directors, and employees. We believe that, given recent developments, it is in everyone’s interests to move those discussions forward as promptly and expeditiously as possible.

In short, as discussed below, phase I of the mediation in the bankruptcy case (which concerned the allocation of assets among Purdue’s public and private claimants), has been largely concluded, and the mediators have filed on the docket a report outlining the results. That report is attached. Purdue and its claimants intend to turn next to phase II, during which they will seek to resolve, among other things, open issues among the Debtors, the creditors, and the Sackler family. The Court’s order concerning phase II, as well as the prior order referenced therein, also are attached.

The Debtors hope to conclude phase II by the end of November, and believe that they will be able to file a reorganization plan by the end of the year and have it confirmed in the months thereafter. Given that the plan likely will provide for a channeling injunction for the benefit of those insurers that resolve their coverage obligations prior to confirmation, there is now a limited window to resolve TIG’s coverage obligations with that protection.

As Purdue reported in my letter approximately two months ago, United States Bankruptcy Judge Robert D. Drain had ordered Purdue and its opioid creditor groups to mediate before Layn Phillips and Kenneth Feinberg regarding how Purdue’s assets will be allocated in a plan of reorganization. In the same letter, Purdue stated that tens of thousands of proofs of claim had been filed and additional claims would

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Christopher R. Carol  
October 2, 2020  
Page 2

continue to be filed through the July 30, 2020 deadline set by Judge Drain. Purdue then advised that its creditors' demands exceeded, by orders of magnitude, the limits of liability of Purdue's insurance policies (where applicable).

As it turned out, while the proofs of claim are still being tabulated and analyzed, it appears that the total number of filed proofs of claim will be close to 615,000, and the aggregate value asserted for the claims will be in the many trillions of dollars.

As a result of phase I mediation discussions, non-federal public claimants have agreed in principle to parameters for allocating Purdue's assets among themselves and with Native American Tribes. In addition, as set forth in the mediators' report, the non-federal public claimants have entered into individual term sheets outlining the allocation of estate value to certain private claimant groups—personal injury claimants, hospitals, third party payors, and certain NAS claimants. Also as set forth in the mediators' report, these term sheets remain contingent upon satisfaction of other issues related to final plan confirmation. Purdue will provide the specific terms of the agreements between its creditor groups once they are finalized and made public or an agreement is reached among all stakeholders to permit disclosure to Purdue's insurers.

These developments underscore the importance of moving forward promptly to resolve Purdue's insurers' obligations to address the opioid-related liabilities that are the subject of the bankruptcy proceeding. Purdue and its creditors—who are the ultimate beneficiaries of Purdue's insurance—remain interested in resolving Purdue's coverage consensually, if possible. If TIG would like the benefit of a channeling injunction, we need to reach a resolution within the next several months, and we are prepared to work with you to accomplish that goal.

Please let us know your availability over the next two weeks for an initial call to discuss the Debtors' coverage claims and a process to resolve them on a consensual basis. Please also let us know who will participate in the initial video conference on behalf of TIG. Once we receive your available dates and confirm availability on our side, we will send around a calendar invite. We anticipate that the initial meeting will last no more than 90 minutes.

Please note that notwithstanding anything contained in or omitted from this letter, Purdue, the committees, and Purdue's creditors as a whole reserve all of their rights with respect to the foregoing and all other matters and do not waive anything.

With best regards,



Ann V. Kramer

cc: Arik Preis, counsel to the Official Committee (apreis@akingump.com, via email)  
Scott Gilbert, counsel to the Ad Hoc Committee (gilberts@gilbertlegal.com, via email)

Attachments

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re: : Chapter 11  
PURDUE PHARMA L.P., *et al.*, : Case No. 19-23649 (RDD)  
Debtors. : (Jointly Administered)  
: X  
-----X

**MEDIATORS' REPORT**

The Honorable Layn Phillips and Mr. Kenneth Feinberg, appointed co-mediators (the “Mediators”) in these cases pursuant to an order of this Court entered March 4, 2020 (the “Mediation Order”) (Dkt. No. 895),<sup>1</sup> respectfully submit this report in accordance with paragraph 17 of the Mediation Order.

**Initial Statement**

1. The Mediators report that every participant in the Mediation, whether participating as an official Mediation Party or informally, engaged with both the Mediators and one another in good faith for the purpose of negotiating an allocation of the Debtors’ estate as among the Private Claimants and Non-Federal Public Claimants. The participants in the Mediation process who were not “Mediation Parties” included the United States of America, Native American Tribes, representatives of a putative class of independent public school districts (the “PSD”)<sup>2</sup>, proposed representatives of a putative class of children born with NAS in the State of West Virginia (the “WV NAS”), the NAACP and a group of victim advocates which refer to

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<sup>1</sup> Unless the context requires otherwise, capitalized terms not defined in this Report have the meanings given them in the Mediation Order.

<sup>2</sup> The PSD also participated in Mediation pursuant to the April 21, 2020 consent order. The Public School Districts are represented by the law firms of Mehri & Skalet, and Hughes Socol Piers Resnick & Dym, Ltd. and their co-counsel. The Non-Federal Public Claimants do not include the PSD.

themselves as the “Ad Hoc Committee on Accountability”. The Mediators also heard the views of individual claimants during the Mediation.

2. For ease of reference, the following defined terms are used in this report:

- a. The Non-Federal Public Claimants means the Ad Hoc Group of Non-Consenting States (the “NCSG”), the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the “AHC”) and the Multistate Governmental Entity Group (the “MSGE”).
- b. The Personal Injury Claimants means the Ad Hoc Group of Individual Victims.
- c. The TPPs means counsel for the Blue Cross Blue Shield Association, various third-party payors and health insurance carrier plaintiffs.
- d. The Hospitals means the Ad Hoc Group of Hospitals.
- e. The NAS Committee means the Ad Hoc Committee of NAS Children.
- f. The Insurance Purchasers means a putative class of individual health insurance purchasers.
- g. Native American Tribes means the Muscogee (Creek) Nation, a member of the AHC, the Cheyenne & Arapaho Tribes, an ex officio member of the Unsecured Creditors’ Committee, and other federally recognized tribes represented by various counsel from the Tribal Leadership Committee and the Plaintiffs Executive Committee in MDL No. 2804.

A list of the names and counsel and principals who participated in one or more mediation sessions is attached hereto as Exhibit A.

### **Summary of Mediation Outcomes**

#### **The Non-Federal Public Claimants Abatement Agreement**

3. During the Mediation, the Non-Federal Public Claimants agreed among themselves that all value received by them through these chapter 11 cases would be exclusively dedicated to programs designed to abate the opioid crisis, and that such value cannot be used for any other purpose (other than an amount to fund administration of the programs themselves and to pay legal fees and costs). To the Mediators' knowledge, this is the first time States, Territories, Native American Tribes and Local Governments have agreed to be bound by such a commitment. The Non-Federal Public Claimants also have agreed that these requirements will be embedded in a plan of reorganization for Purdue and the related order confirming such plan.

4. The NCSG, the AHC and the MSGE also addressed and resolved other significant issues, including value allocation for all Native American Tribes (and the inclusion of culturally appropriate abatement programs for these communities) and a default mechanism that, in the absence of a standalone agreement between a State or Territory and its political subdivisions, provides a structure and process for applying funds to abate the opioid crisis and ensures consultation through local participation mechanisms in determining which programs will be funded from value received. The NAACP and the Non-Federal Public Claimants are also committed to continuing to engage regarding concerns about the equitable implementation of the abatement program in each State. This discussion has not ended and will continue. No agreement between the PSDs and the Non-Federal Government Entities has been reached to date. We will continue to seek resolution between the PSDs and the Non-Federal Government Entities.

The Private Claimants' Agreements

5. Subject to limited conditions discussed below, there are four written term sheets each of which, individually, is supported by the Debtors, the Non-Federal Public Claimants and the specific individual Private Claimant group (or counsel to certain members of such Private Claimant Group) that is counterparty to such term sheet, which addresses allocation of estate value to each Private Claimant group, respectively. Such term sheets have been reached, respectively, with each of the Personal Injury Claimants, the Hospitals, counsel to certain of the TPPs, and the NAS Committee (with regard to abatement) (the "TS Private Claimants"). In addition, the Debtors and the Insurance Purchasers have reached an agreement for an agreed sum to be paid over two years that will be dedicated to a specific abatement use that has been agreed by the Debtors and the Insurance Purchasers.

6. Subject to the terms of the term sheet reached with the Personal Injury Claimants, personal injury claimants will be eligible to receive cash distributions through fair and equitable trust distribution procedures developed by the Personal Injury Claimants but subject to the consent of the Non-Federal Public Claimants, such consent not to be unreasonably withheld, and approval by the Court as part of a confirmed plan of reorganization. The NAS Committee (with regard to personal injury claims) and others are participating in the drafting of the trust distribution procedures.

7. The term sheets for the Hospitals, TPPs, and NAS Committee (with regard to abatement) require each private creditor group to use substantially all of their respective allocations to fund mutually agreeable programs designed to abate the opioid crisis (including treatments), pursuant to commitments embodied in a confirmed plan of reorganization.

### **Other Elements of the Term Sheets**

8. While certain details of the term sheets remain to be finalized, there are certain similarities among the agreements, as set forth below.

9. First, each of the Private Claimants will receive a fixed amount of value over time, the values and time periods varying for each such group.

10. Second, in exchange for this treatment under a confirmed plan of reorganization, the Private Claimants will release (or support releases of) the Debtors, their estates, and their respective current and former officers, directors, employees, and owners (and any related trusts and their respective trustees and beneficiaries), subject to paragraph 12 below.

11. Third, legal fees for each Private Claimant group will be paid exclusively out of its agreed distribution or by other agreements with individual claimants (and not by the estate), although the application of legal fees remains to be resolved between the Non-Federal Public Claimants and each of the Private Claimant groups.

12. Fourth, all term sheets with the TS Private Claimants are conditioned on the Court's confirmation of a plan of reorganization that includes participation by the Sackler family in the plan of reorganization (although this does not limit the ability of any Non-Federal Public Claimant to object to or vote against a plan of reorganization). Three of the four term sheets also are conditioned on resolution of the United States' claims on terms reasonably acceptable to the Non-Federal Public Claimants, and email correspondence with respect to the fourth term sheet addresses this issue as well.

### **Next Steps**

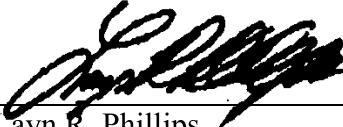
13. As indicated above, there remain terms to be negotiated by the parties with respect to each of the term sheets in order to reach final agreements between each of the four TS

Private Claimant groups and the Non-Federal Public Claimants, respectively. In addition, the Debtors and the Insurance Purchasers will need to finalize their agreement.

14. The Non-Federal Public Claimants and the four TS Private Claimants have indicated an intent to work diligently with the Mediators to resolve certain remaining open issues pertaining to their term sheets. The Debtors and the Insurance Purchasers will do the same.

15. We have agreed to remain available throughout September (and, if necessary, longer) to help facilitate resolution of open issues.

Dated: September 23, 2020

By:   
Layn R. Phillips

By: Ken Feinberg pp Layn R. Phillips  
Kenneth R. Feinberg

*Mediators*

**Exhibit A**

**List of Mediation Parties**

Mediation Parties	Name of Individual Participants
Debtors	Marc Kesselman (Purdue Pharma L.P.) Marshall Huebner (Davis Polk & Wardwell LLP) Frances Bivens (Davis Polk & Wardwell LLP) Benjamin Kaminetzky (Davis Polk & Wardwell LLP) Eli Vonnegut (Davis Polk & Wardwell LLP) Sheila Birnbaum (Dechert LLP)
Official Committee of Unsecured Creditors	Arik Preis (Akin Gump Strauss Hauer & Feld, LLP) Sara Brauner (Akin Gump Strauss Hauer & Feld, LLP) Mike Atkinson (Province, LLP)
NCSG	Michelle Burkart (California Attorney General) Judith Fiorentini (California Attorney General) Kimberly Massicotte (Connecticut Attorney General) Jeremy Pearlman (Connecticut Attorney General) Sandy Alexander (Massachusetts Attorney General) Gillian Feiner (Massachusetts Attorney General) M. Umair Khan (New York Attorney General) David Nachman (New York Attorney General) James Donahue (Pennsylvania Attorney General) Neil Mara (Pennsylvania Attorney General) Melissa Van Eck (Pennsylvania Attorney General) Tad O'Neill (Washington Attorney General) Pillsbury Winthrop Shaw Pittman LLP
AHC	John Guard (Florida Attorney General) Gary Gotto (Keller Rohrback LLP) Joseph Rice (Motley Rice LLC) Pamela Thurmond (City of Philadelphia) Paul Hanly (Simmons Hanly Conroy LLC) Michael Leftwich (Tennessee Attorney General) Jennifer Peacock (Tennessee Attorney General) Paul Singer (Texas Attorney General) Brown Rudnick LLP Gilbert LLP Kramer Levin Naftalis & Frankel LLP Otterbourg P.C.

Mediation Parties	Name of Individual Participants
MSGE	Joanne Cicala (The Cicala Law Firm PLLC) F. Jerome Tapley (Cory Watson, P.C.) John White (Harrison White, P.C.) Dara Hegar (The Lanier Law Firm) Todd Court (McAfee & Taft) Jeffrey Simon (Simon Greenstone Panatier, P.C.) Shelly Sanford (Watts Guerra LLP) Caplin & Drysdale
Personal Injury Claimants	Ryan Hampton (Individual) Cheryl Juaire (Individual) Anne Andrews (Andrews & Thornton) Sean Higgins (Andrews & Thornton) Ed Neiger (ASK LLP) Ed Gentle (Gentle, Turner, Sexton & Harbison, LLC) Chris Shore (White & Case LLP)
TPPs	Mark Fischer (Rawlings & Associates, PLLC) Tom Sobol (Hagens Berman Sobol Shapiro LLP) Lauren Barnes (Hagens Berman Sobol Shapiro LLP) Gerald Lawrence (Lowey Dannenberg P.C.)
Hospitals	John W. (Don) Barrett (Barret Law Group, P.A.) Robert A. Clifford (Clifford Law Offices, P.C.) Jonathan W. Cuneo (Cuneo Gilbert & LaDuca, LLP)
NAS Committee	Celeste Brustowicz (Cooper Law Firm, LLC) Scott Bickford (Martzell Bickford & Centola, LLC) Calvin Fayard (Calvin C. Fayard, Jr. APC) Kevin Malone (Krupnick Campbell Malone)
Insurance Purchasers	Nicholas F. Kajon (Stevens & Lee, P.C.) James Young (Morgan & Morgan, P.A.) Juan R. Martinez (Morgan & Morgan, P.A.)

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
:  
PURDUE PHARMA L.P., *et al.*, : Case No. 19-23649 (RDD)  
:  
Debtors. : (Jointly Administered)  
:  
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**ORDER EXPANDING SCOPE OF MEDIATION**

Entry of an order (this “Supplemental Mediation Order”) supplementing the order (the “Mediation Order”)<sup>1</sup> entered by the Court on March 4, 2020 [Dkt. No. 895] directing the appointment of the Honorable Layn Phillips and Mr. Kenneth Feinberg (the “Mediators”) to serve as co-mediators in these chapter 11 cases as set forth therein being in the estates’ best interests; and the Court having jurisdiction to consider such request pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Supplemental Mediation Order being a core proceeding under 28 U.S.C. § 157(b) that this Court may decide by a final order consistent with Article III of the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice or a hearing is required; and after due deliberation the Court having determined that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest,

IT IS HEREBY ORDERED THAT:

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<sup>1</sup> Unless the context requires otherwise, capitalized terms not defined in this Order have the meanings given them in the Mediation Order.

1. This Supplemental Mediation Order supplements the Mediation Order, as set forth herein, and all provisions of the Mediation Order not expressly amended hereby remain in full force and effect.

2. In accordance with paragraph 3 of the Mediation Order, the Mediators are authorized to continue the existing mediation to resolve open issues referenced in the *Mediators' Report* [Dkt. No. 1716]; *provided* that the Non-Federal Public Claimants and the Private Claimants shall not reopen or renegotiate issues that have already been resolved in the mediation as of such date.

3. In accordance with paragraph 3 of the Mediation Order, the scope of the Mediators' authority shall be expanded to authorize the Mediators to mediate any and all potential claims or causes of action that may be asserted by the estate or any of the Non-Federal Public Claimants against the Covered Parties (as defined in the *Amended and Restated Case Stipulation Among the Debtors, the Official Committee of Unsecured Creditors and Certain Related Parties* [Dkt. No. 518]) or that may otherwise become the subject of releases potentially granted to the Covered Parties in these chapter 11 cases (the "Shareholder Claims").

4. With respect to the mediation of Shareholder Claims as set forth herein, the Mediation Parties shall consist solely of the (i) Debtors, (ii) Creditors' Committee, (iii) Consenting Ad Hoc Committee, (iv) Non-Consenting States, (v) MSGE Group, and (vi) representatives of the Covered Parties. To the extent not previously executed, the Mediation Parties shall execute and agree to be bound by the Protective Order. The Federal Government shall be entitled, without further order of the Court, to participate in mediation sessions as an observer. The advisors to the Mediation Parties listed in this paragraph 4 shall be permitted to disclose information, including, without limitation, discussions, proposals, agreements, and written materials but expressly

excluding any proposal, mediation position, analysis, agreement or similar information from or with a mediation party who has not consented to its disclosure under this paragraph regarding the mediation of Shareholder Claims to counsel to any party that is bound both by the Protective Order and the Mediation Order (including, as applicable for such party, so long as such counsel is included within the designated counsel pursuant to paragraph 44 of the Protective Order), which counsel shall continue to be bound by the Protective Order in connection with the receipt of any such information.

5. The mediation with respect to the Shareholder Claims authorized hereby shall continue until terminated by the Mediators or by further order of this Court.

6. Paragraph 14 of the Mediation Order is hereby amended and restated as follows: To the extent that any Mediation Party is in possession of privileged or confidential documents and/or information provided to such Mediation Party pursuant to the terms and conditions of the Protective Order, such information may (with the written consent of the party that owns such privilege), but shall not be required to, be disclosed to the Mediators and other Mediation Parties, but shall otherwise remain privileged and confidential. Any Mediation Party may provide documents and/or information to the Mediators that are subject to a privilege or other protection from discovery, including the attorney-client privilege, the work product doctrine, or any other privilege, right, or immunity the parties may be entitled to claim or invoke (the "Privileged Information"). By providing the Privileged Information to the Mediators or by consenting in writing to the Mediators providing such Privileged Information to another party, no Mediation Party nor its respective professionals intends to, nor shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, or any other privilege, right or immunity they may be entitled to claim or invoke with respect to any Privileged Information or otherwise. Any work product, materials, or information shared or produced by a Mediation Party with the Mediators, including Privileged Information, shall be subject to all applicable

mediation privileges and shall not be shared by the Mediators with any other Mediation Parties without the consent of the sharing or producing Mediation Party.

7. References to “Mediation Parties” in paragraphs 5, 9, 10, 11, 12, and 13 of the Mediation Order shall be construed, for purposes of mediation of the Shareholder Claims, to apply to the Mediation Parties listed in paragraph 4 hereof.

8. Participation in the mediation does not waive any jurisdictional defenses that otherwise would apply to any party, all of which defenses are reserved.

9. Except as expressly set forth herein, the Mediation Order shall remain in full force and effect.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: September 30, 2020  
White Plains, New York

1.

*/s/ Robert D. Drain*  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

**PURDUE PHARMA L.P., et al.,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 19-23649 (RDD)**

**(Jointly Administered)**

**ORDER APPOINTING MEDIATORS**

Upon the unopposed motion (the “**Motion**”) of Purdue Pharma L.P. (“**PPLP**”) and its affiliates that are debtors and debtors in possession in these cases (collectively, the “**Debtors**,” the “**Company**,” or “**Purdue**”), for entry of an order (this “**Order**”) directing the appointment of the Honorable Layn Phillips and Mr. Kenneth Feinberg as co-mediators and requiring that the Mediation Parties (defined herein) attend and participate in good faith in mediation, which will involve the mediation of the issue(s) defined herein, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.),<sup>2</sup> as a core matter under 28 U.S.C. § 157(b)(1) that this Court may decide by a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant to 28 U.S.C. § 157(b); and it appearing that the relief requested is in the best interests of the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717), and SVC Pharma Inc. (4014). The Debtors’ corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

<sup>2</sup> Capitalized terms not defined herein shall have the same meaning ascribed to them in the Motion.

Debtors, their estates, and creditors; and that adequate notice has been given and that no further notice is necessary; and after due deliberation, and good and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. The Court authorizes and appoints the Honorable Layn Phillips and Mr. Kenneth Feinberg, working together on the same terms (both economic and non-economic), to serve as co-mediators in these chapter 11 cases (each a “**Mediator**,” and together, the “**Mediators**”) and to conduct the mediation as set forth herein. The Mediators will be compensated at a rate of \$500,000 per month each. The Mediators, upon agreement between them, shall be entitled to retain, in their sole discretion, financial, public health or other professionals or consultants to assist them; *provided however* that the aggregate cost of all such financial or other professionals or consultants so retained shall not exceed \$250,000 without further order of this Court.
3. The Mediators are authorized to mediate the dispute(s) between the Non-Federal Public Claimants, on the one hand, and the Private Claimants,<sup>3</sup> on the other, as to the allocation of value/proceeds available from the Debtors’ estates, including, without limitation, from any settlements, to such claimants, in each case on an aggregate basis as between them. In doing so, the Mediators and Mediation Parties may need to consider a variety of concepts and issues, including, without limitation, various sources of value for the estates, various claims of persons or entities who are not Mediation Parties, the interests of private non-Mediation Parties, such as individuals for whom health care professionals have prescribed the Debtors’ FDA-approved pain and other medications, and different modes and methods of allocation. In addition, the Mediators

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<sup>3</sup> “Private Claimants” include the parties listed in paragraph 6.b.

may, in their discretion, recommend to the Mediation Parties an expansion to the scope of the mediation. However, subject to the following sentence or further order of this Court, the Mediators are not authorized to mediate disputes, if any, with respect to the allocation(s) of value/proceeds among entities or persons comprising the Non-Federal Public Claimants or among entities or persons comprising the Private Claimants. The Mediators may also mediate any other issues that are agreed upon by all of the Mediation Parties.

4. The Mediation Parties shall consist of the following: (i) the Debtors; (ii) the Official Committee of Unsecured Creditors (including any *ex officio* members) (the “**Creditors’ Committee**”); (iii) the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the “**Consenting Ad Hoc Committee**”); (iv) the Ad Hoc Committee of NAS Babies; (v) the Ad Hoc Group of Hospitals<sup>4</sup>; (vi) the Ad Hoc Group of Non-Consenting States (the “**Non-Consenting States**”); (vii) the Multi-State Governmental Entities Group (the “**MSGE Group**”); (viii) the Ad Hoc Group of Individual Victims; (ix) counsel for the Blue Cross Blue Shield Association, various third party payors and health insurance carrier plaintiffs; and (x) the group of individual health insurance purchasers, represented by Stevens & Lee. P.C. (the “**Insurance Purchasers**”) (each, a “**Mediation Party**,” and, together, the “**Mediation Parties**”).<sup>5</sup> To the extent not previously executed, the Mediation Parties shall execute and agree to be bound by the Protective Order signed by the Court on January 27, 2020, Dkt. No. 784 (the “**Protective Order**”).

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<sup>4</sup> “Ad Hoc Group of Hospitals” shall have the meaning set forth in the *Verified Statement of the Ad Hoc Group of Hospitals Pursuant to Bankruptcy Rule 2019* [Dkt. No. 577] (as the same may be amended, modified or supplemented from time to time).

<sup>5</sup> Nothing in this Order is intended to or shall compel trade claimants (independently of their fiduciary, the UCC), the Debtors’ current or former employees, officers and directors, the Federal Government or the shareholders to participate in the mediation at this time.

5. Unless otherwise directed by the Mediators, each of the Mediation Parties, including a representative subset of their respective principals, attorneys, and advisors who are able to participate and make recommendations on behalf of the applicable Mediation Party shall attend and participate in the mediation sessions. For the avoidance of doubt, nothing in this Order seeks to delegate the ultimate decision-making authority on any potential resolution of the mediation from a particular Non-Federal Public or Private Claimant to a representative subset; *provided however*, that any settlement agreement(s) involving any Mediation Party reached through mediation shall be subject to the provisions of paragraph 10. The Mediators, after consultation with the Mediation Parties, may request each Mediation Party participating in a mediation session to appear with at least one principal, although, for the avoidance of doubt, the selection of that principal shall be left to the discretion of each Mediation Party and nothing in this Order requires, or is intended to require—even at the request of the Mediators—the direct participation or attendance at the Mediation by, any particular individual or any individual holding a particular title or rank.

6. For the avoidance of doubt:

- a. “Non-Federal Public Claimants,” as defined in the Motion and used in this Order in connection with the mediation, includes only the states, federal districts and U.S. territories, political subdivisions of the states and Native American Tribes, and does not include the federal government of the United States, or any agency, department, or instrumentality of the federal government (the “**Federal Government**”). The Federal Government is not required to participate in the mediation at this time. All rights of the Federal Government—and, indeed, all of the parties—with respect to the valuation and ultimate plan

treatment of any claims of the Federal Government are fully reserved.

Notwithstanding any other provision of this Order, the Federal Government shall be entitled, without further order of the Court, to send representatives to observe mediation sessions, in a manner to be specified further under the Mediation Procedures (defined below).

b. “Private Claimants” as defined in this Motion and used in the Proposed Order in connection with the mediation includes only certain private parties, including, hospitals; health insurance carrier plaintiffs and third party payors; purchasers of private health insurance; various individuals and estates alleging personal injury or wrongful death claims, including guardian claimants asserting claims on behalf of minors born with NAS due to exposure to opioids in utero; and claimants comprising a putative class of NAS children seeking medical monitoring funding, and does not include trade claimants (except to the extent represented by their fiduciary, the UCC), current or former employees, officers or directors of the Debtors, or members of the Sackler family (in any capacity). All rights of these parties—and, indeed, of all parties in interest—with respect to the valuation and ultimate plan treatment of any claims of, or against, these parties not currently in the mediation are fully reserved.

7. Additional parties in interest other than the Mediation Parties (the “**Additional Parties**”) may participate voluntarily in the mediation in response to a request from the Mediators, or further order of this Court. The Mediators may request that the Court order any Additional Parties to attend the mediation, and nothing herein limits any Mediation Party’s rights with respect to the ability to make such a request of the Court. In such event, appropriate notice and a hearing

shall be provided. All Additional Parties shall become subject to all of the provisions of this Order and shall agree to be bound by the Protective Order.

8. No later than three business days following the entry of this Order, or as soon thereafter as the Mediators are available, the Mediators shall meet and confer with the Mediation Parties and the Federal Government to commence discussions regarding mediation procedures and a schedule for mediation, which shall be consistent with the terms of this Order in all material respects (collectively, the “**Mediation Procedures**”). The Mediators will ultimately determine the Mediation Procedures, in their sole discretion, so long as such procedures are consistent with the terms of this Order in all material respects.

9. Except as provided in paragraphs 7 and 17, the Mediators shall have no communication with the Court relating to the substance of the mediation or matters occurring during the mediation. Further, the Mediators shall not disclose whether a verbal agreement was reached or a Mediation Party has refused to execute a definitive written settlement agreement. The Mediators shall have no obligation to make written comments or recommendations. Except as provided in paragraph 17, the Mediators shall not be compelled to testify or disclose any information concerning the mediation in any forum or proceeding, nor shall any Mediation Party, any Additional Party, or any other party in interest: (a) call or subpoena the Mediators as a witness or expert in any proceeding relating to the mediation, the subject matter of the mediation, or any thoughts or impressions that the Mediators may have about the Mediation Parties, or their respective positions, in the mediation; (b) subpoena any notes, documents or other materials prepared by the Mediators in connection with the mediation; or (c) offer any statements, views or opinions of the Mediators in connection with any proceeding, including, without limitation, any pleading or other submission to any court.

10. Subject to paragraph 5: (a) no party shall be bound by anything said or done during the mediation, unless a Mediation Party voluntarily agrees to be so bound by a written and signed stipulation submitted to the Mediators and the Mediation Parties; and (b) the results of the mediation are non-binding unless the Mediation Parties that agree to be so bound otherwise agree; *provided however*, that any settlement agreement(s) reached through mediation reduced to writing and signed shall be as binding against each signatory as those reached through litigation, subject, with respect to the Debtors, to the requirements of section 363(b) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, and this Court will retain jurisdiction to enforce any such settlement agreement(s).

11. All communications made by and all submissions prepared by a Mediation Party in connection with the mediation, including but not limited to: (a) discussions among any of the Mediation Parties during the course of the mediation, including discussions with or in the presence of the Mediators, (b) mediation statements and any other documents or information provided to the Mediators or the Mediation Parties in the course of the mediation, and (c) all correspondence, settlement proposals, counterproposals, term sheets, and offers of compromise produced for, as a result of, or in connection with the mediation (collectively, the **“Settlement Proposals”**) shall remain confidential, shall not be made available to the public and, as applicable, shall be subject to the Protective Order; *provided however*, that (i) the party making any such Settlement Proposal may agree to the disclosure of such Settlement Proposal pursuant to a confidentiality agreement or otherwise; and (ii) nothing in this Order limits the ability of any Mediation Party to (x) speak publicly (whether through court pleadings, court statements or otherwise) regarding issues in these cases, provided that doing so does not disclose confidential mediation exchanges, data or discussions regarding Settlement Proposals or responses thereto, or (y) comment on the opioid

crisis and those involved in it, these Debtors or these cases, provided that doing so does not, independently of this Order, violate the Protective Order. The materials described in each of the foregoing clauses (a) through (c): (i) shall be protected from disclosure (and shall not be disclosed) to any other Mediation Party or to any other person or party who is not a Mediation Party (including holders of claims for which the Mediation Party is acting in a representative, agent or trustee capacity to the extent such holders are not themselves Mediation Parties) except in accordance with this Order or an applicable confidentiality agreement; (ii) shall not constitute a waiver of any existing privileges and immunities; (iii) shall not be used for any purpose other than the mediation; (iv) shall be subject to protection under Rule 408 of the Federal Rules of Evidence and any equivalent or comparable state law; and (v) except for the sole purpose of enforcing in the Court a settlement agreement reached in this mediation, shall not be admissible for any purpose in any judicial or administrative proceeding. For the avoidance of doubt, if no such settlement agreement is reached, then the foregoing materials shall not be admissible anywhere. The terms of the Protective Order and this Order shall govern any issues with respect to any Mediation Party's disclosure of any Settlement Proposals.

12. The Mediation Parties and their counsel and advisors shall not in any way disclose to any non-party or to any court, including, without limitation, in any pleading or other submission to any court, any such discussion, mediation statement, other document or information, correspondence, resolution, or Settlement Proposal (subject to paragraph 11) that may be made or provided in connection with the mediation; *provided however*, that nothing in this Order shall prevent a Mediation Party from sharing with the Mediators, and thereafter disclosing, to the extent not prohibited by a separate confidentiality agreement or the Protective Order, any draft objections, any potential legal arguments such Mediation Party may raise in the chapter 11 cases, reports of

its own experts, any document produced or obtained in discovery, any information that is, was, or becomes available to a Mediation Party outside of the mediation, such Mediation Party's own work product or materials, or other pleadings filed or to be filed by such Mediation Party with a court of competent jurisdiction.

13. Notwithstanding anything in this Order to the contrary, nothing in this Order other than compliance with the Protective Order shall prevent a Mediation Party from disclosing information revealed during the mediation to the extent such disclosure is required, or as may be required or requested by a governmental or regulatory entity with oversight or other authority over such Mediation Party, that is within the oversight or other authority of such governmental or regulatory entity, or required by statute or court order or other legal or regulatory requirements applicable to such Mediation Party; *provided however*, that if such Mediation Party is requested or required to disclose any information to any third party or governmental or regulatory authority, such Mediation Party shall, to the extent not legally prohibited, provide the disclosing party with prompt written notice of such requirement prior to any disclosure and shall furnish only that portion of such information or take only such action as is legally required.

14. To the extent that any Mediation Party is in possession of privileged or confidential documents and/or information provided to such Mediation Party pursuant to the terms and conditions of the Protective Order, such information may, but shall not be required to, be disclosed to the Mediators and other Mediation Parties, but shall otherwise remain privileged and confidential. Any Mediation Party may provide documents and/or information to the Mediators that are subject to a privilege or other protection from discovery, including the attorney-client privilege, the work-product doctrine, or any other privilege, right, or immunity the parties may be entitled to claim or invoke (the "**Privileged Information**"). By providing the Privileged

Information solely to the Mediators and no other party, no Mediation Party nor its respective professionals intends to, nor shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, or any other privilege, right or immunity they may be entitled to claim or invoke with respect to any Privileged Information or otherwise. Any work product, materials, or information shared or produced by a Mediation Party with the Mediators, including Privileged Information, shall be subject to all applicable mediation privileges and shall not be shared by the Mediators with any other Mediation Parties without the consent of the sharing or producing Mediation Party.

15. Nothing in this Order is intended to, nor shall it, waive, release, compromise, or impair in any way whatsoever, any claims or defenses that a party has or may have, whether known or unknown, in connection with or relating to acts or omissions that took place prior to entry of this Order.

16. Nothing in this Order is intended to, nor shall it operate as, granting relief from the automatic stay in the chapter 11 cases, or the Preliminary Injunction, as amended from time to time, entered by the Court in the adversary proceeding styled, *Purdue Pharma L.P. et al. v. Commonwealth of Massachusetts et al.*, Adv. Proc. No. 19-08289 (Bankr. S.D.N.Y. Nov. 6, 2019) (RDD), Dkt. No. 105.

17. Promptly following the termination of the mediation in accordance with the Mediation Procedures (such date, the “**Termination Date**”), but no later than two (2) business day after the Termination Date, the Mediators shall file a notice with the Court setting forth the following: (a) that the Mediators have conducted the mediation, (b) the names of the participants

in the mediation, (c) whether the participants in the mediation acted in good faith, and (d) whether and to what extent the mediation was successful.

18. The Mediators shall be immune from claims arising out of acts or omissions incident to their service as Mediators in these chapter 11 cases.

19. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Order in accordance with the Motion.

20. For the avoidance of doubt, to the extent any part of this Order shall conflict with Local Rule 9019-1 or the General Order, the terms and provisions of this Order shall govern.

21. This Court retains exclusive jurisdiction to enter supplemental orders concerning all matters arising from or related to the implementation, interpretation, and enforcement of this Order, and to enter such orders at continued hearings on this Motion.

Dated: March 3, 2020  
White Plains, New York

*/s/Robert D. Drain*

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THE HONORABLE ROBERT D DRAIN  
UNITED STATES BANKRUPTCY JUDGE

# Exhibit C

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6

7 PURDUE PHARMA L.P., et al., Case No. 19-23679 (RDD)

8 (Jointly Administered)

9 Debtors.

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12

13 United States Bankruptcy Court

14 One Bowling Green

15 New York, New York 10004-1408

16

17 January 20, 2021

18 10:08 AM

19 HEARING HELD TELEPHONICALLY

20 VIA COURT SOLUTIONS

21

22

23 B E F O R E :

24 HON ROBERT D. DRAIN

25 U.S. BANKRUPTCY JUDGE

Page 2

1 Hearing re: Motion of the Debtors for an Order Approving  
2 Stipulation and Agreed Order Granting Joint Standing to  
3 Prosecute Claims and Causes of Action Related to the  
4 Insurance Coverage to (1) Official Committee of Unsecured  
5 Creditors and (2) Ad Hoc Committee of Governmental and other  
6 Contingent Litigation Claimants (ECF #2227)

7

8 Hearing re: Objection to Motion (related document(s) 2227)  
9 filed by George Calhoun IV on behalf  
10 of Ironshore Specialty Insurance Company. (ECF #2281)

11

12 Hearing re: The Ad Hoc Group of Non-Consenting States  
13 Statement in Support of Debtors Motion to Approve  
14 Stipulation Granting Joint Standing to Prosecute Claims and  
15 Causes of Action Related to the Debtors Insurance Coverage  
16 to (1) the Official Committee of Unsecured Creditors and (2)  
17 the Ad Hoc Committee of Governmental and Other Contingent  
18 Litigation Claimants Filed by Andrew M. Troop on Behalf of  
19 Ad Hoc Group of Non-Consenting States. (ECF #2289)

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Page 3

1 Hearing re: Reply in Support of the Motion of the Debtors  
2 for an Order Approving Stipulation and Agreed Order Granting  
3 Joint Standing to Prosecute Claims and Causes of Action to  
4 the Insurance Coverage to (1) Official Committee of  
5 Unsecured Creditors and (2) Ad Hoc Committee of Governmental  
6 and other Contingent Litigation Claimants (related  
7 document(s)2227) filed by Benjamin S. Kaminetzky on behalf  
8 of Purdue Pharma L.P. (ECF #2292)

9

10 Hearing re: Motion to Approve/Motion for Claim Payment, re:  
11 Claims No. 10231, 615270, 615218 and 614341 with Certificate  
12 of Service filed by Deborah Clonts (ECF #2059)

13

14 Hearing re: Objection to Motion / Debtors' Omnibus  
15 Objection to Deborah Clont's Motions to Approve Claimant  
16 Payment and for Lift of Automatic Stay (related  
17 document(s)2209, 2059, 2175) filed by James I. McClammy on  
18 behalf of Purdue Pharma L.P. (ECF#2266)

19

20 Hearing re: Motion for Lift of Automatic Stay filed by  
21 Deborah Clonts (ECF #2175)

22

23

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Page 4

1 Hearing re: Debtors' Omnibus Objection to Deborah Clont's  
2 Motions to Approve Claimant Payment and for Lift of  
3 Automatic Stay (related document(s)2209, 2059, 2175) filed  
4 by James I. McClammy on behalf of Purdue Pharma L.P.  
5 (ECF #2266)

6

7 Hearing re: Letter dated 12/21/2020 in support of Amended  
8 Motion for Lifting of the Automatic Stay (dated 12/21/2020)  
9 Filed by Deborah Clonts (ECF #2194)

10

11 Hearing re: Amended Motion to Amend Motion for Lift of  
12 Automatic Stay (related document(s)2175) filed by Deborah  
13 Clonts (ECF #2209)

14

15 Hearing re: Fifth Amended Order Extending Time to Object to  
16 Dischargeability of Certain Debts (related document(s)1829,  
17 1289, 700, 720, 1009, 1524) filed by Eli J. Vonnegut on  
18 behalf of Purdue Pharma L.P. with presentment to be held on  
19 1/19/2021 at 10:00 AM (ECF #2220)

20

21 Hearing re: Objection to Debtors' Fifth Amended Order  
22 Extending Time to Object to Dischargeability of Certain  
23 Debts filed by Deborah Clonts (ECF #2270)

24

25

1       Hearing re: Debtors' Reply in Further Support of the Fifth  
2       Amended Order Extending Time to Object to Dischargeability  
3       of Certain Debts [Related to ECF No. 2220 and ECF No.  
4       2270] filed by James I. McClammy on behalf of Purdue Pharma  
5       L.P. (ECF #2287)

6

7       Hearing re: Motion of Debtors for Entry of an Order  
8       Extending Time to Object to Dischargeability of Certain  
9       Debts (ECF #700)

10

11       Hearing re: Order signed on 1/7/2020. Extending Time to  
12       Object to Dischargeability of Certain Debts (ECF #720)

13

14       Hearing re: First Order signed on 4/2/2020 Extending Time  
15       to Object to Dischargeability of Certain Debts (related  
16       document(s) 720) (ECF #1009)

17

18       Hearing re: Second Amended Order signed on 6/17/2020  
19       Extending Time to Object to Dischargeability of Certain  
20       Debts (ECF #1290)

21

22       Hearing re: Third Amended Order signed on 7/27/2020  
23       Extending Time to Object to Dischargeability of Certain  
24       Debts to and including November 2, 2020 (ECF #1524)

25

Page 6

1 Hearing re: Fourth Amended Order signed on 10/21/2020  
2 Extending Time to Object to Dischargeability of Certain  
3 Debts (ECF #1829)

4

5 Hearing re: Motion to Intervene filed by KatieLynn B  
6 Townsend on behalf of Dow Jones & Company, Inc., Boston  
7 Globe Media Partners, LLC, and Reuters News & Media, Inc.  
8 (ECF #2022)

9

10 Hearing re: Statement / The Ad Hoc Group of Non-Consenting  
11 States' Statement Regarding the Motion to Intervene and  
12 Unseal Judicial Records by Dow Jones & Company, Inc.,  
13 Boston Globe Media Partners, LLC, and Reuters News & Media,  
14 Inc. (related document(s)2022) filed by Andrew M. Troop on  
15 behalf of Ad Hoc Group of Non- Consenting States (ECF #2065)

16

17 Hearing re: Statement in Support of Motion to Intervene  
18 (related document(s)2022) filed by Paul A. Rachmuth on  
19 behalf of Ad Hoc Committee on Accountability (ECF #2066)

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1 Hearing re: Response /The NAS Children Ad Hoc Committee's  
2 Joinder to the Ad Hoc Group of Non-Consenting States'  
3 Statement Regarding the Motion to Intervene and Unseal  
4 Judicial Records by Dow Jones & Company, Inc., Boston Glob  
5 Media Partners, LLC and Reuters News & Media, Inc. (related  
6 document(s)2065) filed by Scott S. Markowitz on behalf of Ad  
7 Hoc Committee of NAS Babies (ECF #2090)

8

9 Hearing re: Statement of The Raymond Sackler Family In  
10 Respect of The Motion To Intervene And Unseal Judicial  
11 Records By Dow Jones & Company, Inc., Boston Globe Media  
12 Partners, LLC, and Reuters News & Media, Inc. (related  
13 document(s)2022) filed by Gerard Uzzi on behalf of The  
14 Raymond Sackler Family (ECF #2132)

15

16 Hearing re: Debtors' Limited Objection to the Media  
17 Intervenors' Motions to Intervene and Unseal Judicial  
18 Records and Cross-Motion to Seal Certain Judicial Records  
19 (related document(s)1828, 2188) filed by Benjamin S.  
20 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

21

22 Hearing re: Reply to Motion to Unseal (related  
23 document(s)2022) filed by KatieLynn B Townsend on behalf of  
24 Dow Jones & Company, Inc., Boston Globe Media Partners, LLC,  
25 and Reuters News & Media, Inc. (ECF #2288)

1       Hearing re: Motion to Amend Proposed Order (related  
2       document(s)2022) filed by KatieLynn B. Townsend on behalf of  
3       Dow Jones & Company, Inc., Boston Globe Media Partners,  
4       LLC, and Reuters News & Media, Inc. (ECF #2039)

5

6       Hearing re: Notice of Adjournment of Hearing on Motion to  
7       Intervene and Unseal (related document(s)2022) filed by  
8       KatieLynn B Townsend on behalf of Dow Jones & Company, Inc.,  
9       Boston Globe Media Partners, LLC, and Reuters News & Media,  
10      Inc. (ECF #2091)

11

12      Hearing re: Stipulation / Notice of Filing of Stipulation  
13      and Agreed Order Regarding Media Intervenors' Motion to  
14      Unseal Materials Filed in Connection with UCC Privilege  
15      Motions and Adjournment of Hearing on Media Intervenors'  
16      Motion to Unseal (related document(s)2022) Filed by Benjamin  
17      S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2136)

18

19      Hearing re: Stipulation and Agreed Order Signed on  
20      12/15/2020 Regarding Media Intervenors' Motion to Unseal  
21      Materials Filed in Connection with UCC Privilege Motions and  
22      Adjournment of Hearing on Media Intervenors' Motion to  
23      Unseal (related document(s)2022) (ECF #2140)

24

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Page 9

1 Hearing re: Debtors' Ex Parte Motion for Entry of an Order  
2 Shortening Notice with Respect to Debtors' Motion for Entry  
3 of an Order Sealing Judicial Documents (related  
4 document(s)2252) filed by Benjamin S. Kaminetzky on behalf  
5 of Purdue Pharma L.P. (ECF #2153)

6

7 Hearing re: Declaration of Jon Lowne in Support of the  
8 Debtors' Limited Objection to Media Intervenors' Motions to  
9 Intervene (related document(s)2252) filed by Benjamin S.  
10 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2154)

11

12 Hearing re: Second Motion to Intervene and Unseal filed by  
13 KatieLynn B Townsend on behalf of Dow Jones & Company, Inc.,  
14 Boston Globe Media Partners, LLC, and Reuters News & Media,  
15 Inc. (ECF #2188)

16

17 Hearing re: Debtors' Limited Objection to the Media  
18 Intervenors' Motions to Intervene and Unseal Judicial  
19 Records and Cross-Motion to Seal Certain Judicial Records  
20 (related document(s)1828, 2188) filed by Benjamin S.  
21 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

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Page 10

1 Hearing re: Statement of the Raymond Sackler Family in  
2 Respect of the Second Motion to Unseal Judicial Records by  
3 Media Intervenors Dow Jones & Company, Inc., Boston Globe  
4 Media Partners, LLC, and Reuters News & Media, Inc. (related  
5 document(s) 2132, 2188) filed by Gerard Uzzi on behalf of The  
6 Raymond Sackler Family. (ECF #2265)

7

8 Hearing re: Reply to Motion to Unseal (related  
9 document(s) 2022) filed by KatieLynn B Townsend on behalf of  
10 Dow Jones & Company, Inc., Boston Globe Media Partners, LLC,  
11 and Reuters News & Media, Inc. (ECF #2288)

12

13 Hearing re: Debtors' Ex Parte Motion for Entry of an Order  
14 Shortening Notice with Respect to Debtors' Motion for Entry  
15 of an Order Sealing Judicial Documents (related  
16 document(s) 2252) filed by Benjamin S. Kaminetzky on behalf  
17 of Purdue Pharma L.P. (ECF #2253)

18

19 Hearing re: Declaration of Jon Lowne in Support of the  
20 Debtors' Limited Objection to Media Intervenors' Motions to  
21 Intervene (related document(s) 2252) filed by Benjamin S.  
22 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2254)

23

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1 Hearing re: Debtors' Ex Parte Motion for Entry of an Order  
2 Shortening Notice with Respect to Debtors' Motion for Entry  
3 of an Order Sealing Judicial Documents (related  
4 document(s)2252) filed by Benjamin S. Kaminetzky on behalf  
5 of Purdue Pharma L.P. (ECF #2253)

6

7 Hearing re: Debtors' Limited Objection to the Media  
8 Intervenors' Motions to Intervene and Unseal Judicial  
9 Records and Cross-Motion to Seal Certain Judicial Records  
10 (related document(s)1828, 2188) filed by Benjamin S.  
11 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

12

13 Hearing re: Debtors' Ex Parte Motion for Entry of an Order  
14 Shortening Notice with Respect to Debtors' Motion for Entry  
15 of an Order Sealing Judicial Documents (related  
16 document(s)2252) filed by Benjamin S. Kaminetzky on behalf  
17 of Purdue Pharma L.P. (ECF #2153)

18

19 Hearing re: Second Motion to Intervene and Unseal filed by  
20 KatieLynn B Townsend on behalf of Dow Jones & Company, Inc.,  
21 Boston Globe Media Partners, LLC, and Reuters News & Media,  
22 Inc. (ECF #2188)

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24 Transcribed by: William J. Garling, Pamela A. Skaw, and  
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1

P R O C E E D I N G S

2

THE CLERK: Good morning, everyone. My name is  
3 Brian, one of Judge Drain's court clerks.

4

Just as a reminder, today's hearing is 100 percent  
5 telephonic, so we do ask everyone to please carry yourself  
6 with the same decorum you would inside the courtroom.

7

Please remember to keep your lines muted when not  
8 speaking so we can avoid any unnecessary background invoices  
9 that may interfere with today's hearing, and make sure to  
10 unmute yourself before speaking so that you are heard.

11

We do ask that everyone please state your name  
12 each time that you speak so that the judge, all other  
13 participants, and the recording for the transcriber can keep  
14 track of who is speaking at all times.

15

Thank you, everyone, for your cooperation and your  
16 participation, and the judge will be joining us in just a  
17 few short minutes.

18

(Pause)

19

UNIDENTIFIED SPEAKER: Hi, Dr. Jay  
20 (indiscernible).

21

THE COURT: Good morning, this is Judge Drain.

22

We're here on the omnibus hearing date in January  
23 for Purdue Pharma, L.P. et al. This hearing is completely  
24 telephonic.

25

You should identify yourself and if you're a

Page 16

1 lawyer or your client, the first time you speak, you should  
2 do so thereafter so there's no doubt that the court reporter  
3 can put together your name with your voice.

4 Because this hearing is completely telephonic, you  
5 should keep your phone on mute unless you are speaking, of  
6 course, another which point you should unmute yourself.  
7 There's one authorized recording of these hearings. It's  
8 taken on a daily basis by Court Solutions and provided on a  
9 daily basis to our Clerk's Office.

10 If you want a transcript of the hearing on your  
11 matter, you should contact the Clerk's Office to arrange for  
12 the production of one.

13 So, with that introduction, I have the amended  
14 agenda for these omnibus hearings, which came in yesterday  
15 and I'm happy to go down that agenda in the order that the  
16 agenda lists the matters.

17 MR. HUEBNER: Thank you, Your Honor.

18 Let me first do a sound check. This is Marshall  
19 Huebner of Davis Polk, on behalf of the Debtors.

20 Can you Court hear me clearly?

21 THE COURT: Yes, I can hear you fine. Thanks.

22 MR. HUEBNER: Terrific.

23 Good morning, Your Honor. Happy new year, on this  
24 important day, obviously, on events far outside of this  
25 case.

1                   As is our custom, I would like to give a brief,  
2 and actually in today's case, an unusually brief overall  
3 case update before turning to the agenda.

4                   Number one, Your Honor, good news on the Noramco  
5 front. So, I would like to note for the benefit of the  
6 Court and all parties, that the Noramco Coventry sale that  
7 was approved by motion last year closed on December 31st,  
8 2020, as we hoped it would. You know, with all the issues  
9 going on in this case (indiscernible) other cases would be  
10 very important case developments risked being lost entirely.  
11 As we stated in our September 14th motion, this sale will  
12 inject significant incremental value into the estate by  
13 reducing the cost to Purdue of obtaining necessary active  
14 pharmaceutical ingredients for various products.

15                  And now that the transaction has closed, I'm very  
16 pleased to report that we think that the savings will be  
17 even greater than we had projected and will likely,  
18 substantially feed \$100 million, frankly, of incremental  
19 value to stakeholders, which is, in the context of this  
20 case, and given the unexpected uses of the estate's value,  
21 is particularly important.

22                  Number two, Your Honor, very briefly, what I would  
23 call cash balance and health of the business. So that the  
24 Court knows, the Debtors' cash balance as of our last  
25 publicly filed MOR is \$1.275 billion, which, remarkably, is

1 pretty close to what the considerable cash balance was on  
2 the petition date almost a year and a half ago.

3 So that it's clear to all parties, this most  
4 assuredly has not been achieved through increase or even in  
5 the maintenance of the level of opioid sales. In fact, if  
6 you look at the November MOR and compare it to the one from  
7 a year ago, you would see that our net sales are actually  
8 down about 22 percent from the same month a year ago;  
9 rather, the cash balance is a result of prudent, strategic  
10 decisions and stewardship. It's all the more impressive  
11 when you consider the extraordinary burdens of this case  
12 both, in soft and hard costs.

13 The complex underlying pharmaceutical business,  
14 which obviously has many products, not just OxyContin, as I  
15 have said a few times before over the last many months,  
16 often gets lost in our various discussions of Purdue as a  
17 Defendant or Purdue as a Debtor and the businesses, in fact,  
18 have been managed and then performed exceptionally well in  
19 the face of the truly extraordinary costs and enormous  
20 challenges of these Chapter 11 cases and, of course, the  
21 national climate and the pandemic, which has obviously  
22 resulted in our highly regulated, you know, factories and  
23 other facilities and even more extraordinary restrictions  
24 that, you know, were further had to be dealt with and  
25 addressed.

1 Number three, Your Honor, very briefly, on the PHI  
2 initiatives, just a quick update since we did turn the year-  
3 end, the Debtors have continued to progress their public  
4 health initiative since each was last discussed with the  
5 Court. We, of course, fully understand and has made clear  
6 many times that what happens with the Debtors' assets, post-  
7 emergence, including with respect to the scope and the costs  
8 of PHI initiatives is an issue whose precise contours are to  
9 be worked out with the relevant stakeholders, but while in  
10 Chapter 11, as we've also said many times, the company's job  
11 continues to be on a cost-effective way advancing these  
12 important public health initiatives so that decisions can  
13 then be made.

14 As a reminder, we were last before the Court on  
15 this topic on June 23rd, 2020, almost seven months ago. And  
16 since then, there have been, which I will very quickly tick  
17 through, a couple of -- several, actually, very important  
18 milestones. Number, with respect to Nalmefene, which is the  
19 medication intended to reverse opioid overdoses, the Debtors  
20 in December filed with the FDA, an abbreviated new drug  
21 application, known in the field as an NDA, for approval of  
22 the vial version, V-I-A-L, of Nalmefene, and the approval of  
23 the other forms, including the autoinjector, which I'm sure  
24 the Court remembers, we discussed at some length, are on  
25 track as well. The target submission date for the prefilled

Page 20

1 syringe is May 2021 and the autoinjector target filing date  
2 is May 2022.

3 With respect to the Debtors' generic version of  
4 suboxone tablets, which is one of the leading, current  
5 opioid addiction treatments, the FDA approved the Debtors in  
6 March and as of May 2020, Purdue's generic suboxone tablets  
7 were manufactured and ready for shipment. So, that one is  
8 already at fruition.

9 With respect to the thing we discussed most  
10 recently, which is the HRT, low-cost, over-the-counter  
11 naloxone nasal spray, to take it out of the world of  
12 prescription and hopefully lower the cost dramatically for  
13 the whole country, really, this is the medicine that is  
14 similar no NARCAN and is intended to be used to reverse  
15 opioid overdoses.

16 One clinical trial is required by the FDA  
17 (indiscernible) approval. That actually commenced in  
18 September 2020, which followed the FDA's tentative approval  
19 of RIVIVE, R-I-V-I-V-E, as the trade name, in May 2020.

20 The target, new-drug application submission date  
21 for OTC naloxone is the third quarter of this year with  
22 approval and launch both expected in the year thereafter.

23 So, I am happy to report since we, as you know,  
24 and many others candidly think that these are extremely  
25 important medications, that PI is progressing on track.

1                   The last topic, Your Honor, before we go to the  
2 agenda is where we are, you know, the end of exclusivity,  
3 other upcoming dates in the case and the status of  
4 mediation, which I will touch very lightly, but I think a  
5 couple of very quick updates are important.

6                   Obviously, Your Honor, it's not lost on anyone  
7 dialed in this morning to the hearing that you ruled at our  
8 last hearing that the mediation will be concluding on  
9 January 31, which, at this point, is 11 days away and after  
10 that, of course, exclusivity, as the Debtors requested, ends  
11 on February 15th.

12                  But February 15th is actually a critically  
13 important date in this case for a second reason, as well.  
14 The extraordinary injunction originally granted by this  
15 Court on October 11th, 2019, is currently slated to expire  
16 on March 1 and the deadline by which the Debtors have to  
17 file a motion to extend that injunction, with respect to  
18 either or both of the Debtors and the shareholder-related  
19 persons is in fact February 15th on the motion that we  
20 expect to be heard at the March 1 hearing at 10:00 a.m.

21                  With respect to these issues, I think it's very  
22 important for the Court and all parties to understand that  
23 unless a settlement has been reached with the shareholders  
24 by February 15th or the Debtors believe that one will very  
25 soon be reached on or about that date, as I stand here today

Page 22

1 it is very difficult for me to conceive of a circumstance in  
2 which the Debtors would, on February 15th, move to extend  
3 the injunction, with respect to the shareholder-related  
4 (indiscernible).

5 So, that brings us back to February 15th, which is  
6 26 days from today. With respect to the mediation, as the  
7 Court and the parties are, of course, also aware, we are  
8 extremely limited, as we should be, by the confidentiality  
9 provisions and the mediation order we asked this Court to  
10 enter as to what we can report. That said, I don't think  
11 it's telling any tales out of school today that we are not  
12 currently where we need to be or, of course, I would be  
13 standing here today making a good news announcement and I am  
14 clearly not doing that.

th

15 We have 26 days until February 15 , and we are  
16 working as hard as we know how to on many, many issues with  
17 many parties. And on or about February 15th, we will, as we  
18 have been ordered to, as, of course, must because of  
19 exclusivity, file the best plan then possible, which we hope  
20 will have widespread support, even if it does not yet have  
21 complete consensus.

22 As Your Honor has told us again, and again, and  
23 again, including on June 3rd, July 23rd, September 30th, and  
24 December 15th, work hard to build consensus, but the Court  
25 understands the likelihood that everyone will be onboard

Page 23

1 with all aspects as of any particular date, and that the  
2 Debtors need to take the conversations as far as they can,  
3 but also need to move the cases forward and not let the  
4 perfect be the enemy of the good.

5 I will cite only three examples for context and  
6 then turn the agenda over. On June 3rd, 2020, you said, and  
7 I quote:

8 "The parties in this case need to realize that the  
9 results in this case cannot be exactly what they want.  
10 Perfection is not achievable here... I want this case to  
11 move ... and one way to do that is to tell the Debtors we  
12 don't need consensus on everything."

13 On July 23rd, 2020, you said:

14 "I sincerely hope that that's an agreement that  
15 involves and includes all the mediation parties, but, again,  
16 having served in that role many times, I know that sometimes  
17 you can't achieve that. Maybe you get all but one, for  
18 example. I'm not expecting complete consensus ... so I  
19 would urge the parties, as I did last month, to put aside  
20 the perfect and agree on the good and move on with things to  
21 the next stage of this case."

22 And then, finally, and even in more direct context  
23 on December 15th, you said:

24 "The parties don't have to reach agreement, but I  
25 urge them to do their best to do so by January 31 on these

Page 24

1 issues so that if possible, a settlement is reached on both  
2 the Debtor claims and potentially the third-party claims ...  
3 the parties simply need to conclude these negotiations so  
4 the plan can be filed because as we all know, every day that  
5 passes, some poor soul is not getting either the counseling  
6 that he or she needs or the treatment that he or she needs  
7 or a NAF baby is no longer a baby and their grandparents are  
8 not getting the help they need."

9 We will of course follow the Court's clear and  
10 consistent admonitions. Candidly, Your Honor, I don't know,  
11 as I stand here today, exactly what plan we will be filing.  
12 We have 26 days left and we know that the relevant parties  
13 will remain intentionally and fully engaged both, through  
14 the end of mediation on January 31, as well as the first two  
15 weeks in February.

16 But I can assure you, Your Honor, that we will  
17 file the best plan we can, based on where we are in the  
18 middle of February. With that, Your Honor, unless the Court  
19 has any questions, I would propose to proceed with the  
20 agenda.

21 THE COURT: Okay. Thanks for the update.

22 I don't have any questions. I don't know if  
23 there's anything that anyone, for example, the committee,  
24 wants to respond to or whether to just move on to the  
25 agenda. So, I'll pause for a moment if someone wants to

Page 25

1 address anything that Mr. Huebner has not covered in his  
2 opening remarks?

3 (Pause)

4 THE COURT: Okay. Then, why don't we proceed down  
5 the agenda.

6 MR. HUEBNER: Terrific, Your Honor.

7 Item 1 on the agenda is a contested matter which  
8 is the Debtors' motion. I would ask my partner, Mr.  
9 Kaminetzky, if he would step up to the electronic podium and  
10 handle the motion to approve the insurance stipulation.

11 THE COURT: Okay.

12 MR. KAMINETZKY: Good morning, Your Honor. May I  
13 please the Court, Benjamin Kaminetzky of Davis Polk on  
14 behalf of Purdue, its 22 subsidiaries, and Purdue Pharma,  
15 Inc., its general partner.

16 Can you hear me all right?

17 THE COURT: Yes, I can hear you fine. Thanks.

18 MR. KAMINETZKY: So, Your Honor, I'll be  
19 addressing the Debtors' motion for the Court to approve the  
20 stipulation agreed order granting joint standing to  
21 prosecute the Debtors' insurance causes of action to the UCC  
22 and the ad hoc committee, which I'll refer to together as  
23 "the committees."

24 The stipulation represents an almost unprecedented  
25 occasion in these cases where relief has been requested

1 and/or supported by both estate fiduciaries, the Debtors,  
2 and the UCC, by the ad hoc committee, and by the non-  
3 consenting states group, whose statement in support is at  
4 Docket Number 2289.

5 I'll also be responding to the single objection  
6 filed by Ironshore Specialty Insurance, formerly known as  
7 TIG, one of the Debtors' insurers. I will refer to them as  
8 "TIG."

9 Now, consistent with the coordination and  
10 cooperation among the Debtors and the committees that the  
11 stipulation embodies, the committees have left it to me to  
12 present the argument on this motion and my colleagues from  
13 Akin and the Gilbert firm will step in only on rebuttal or,  
14 of course, if the Court has any questions specifically for  
15 one of them.

16 Your Honor, three sentences of context. Debtors  
17 and certain related parties are insureds, pursuant to over  
18 100 insurance policies covering periods between 2001 and  
19 2018 from over 30 insurance groups, which together provide  
20 over \$3 billion of coverage limits for, among other things,  
21 product liability, general liability, and D&O liability.  
22 Aside from approximately \$275 million that has been  
23 exhausted or is insolvent, this coverage remains  
24 unexhausted. The collective proceeds of this remaining  
25 coverage is a very large substantial asset of the Debtors'

1 estate to say the least.

2 Now, the stipulation reflects the Debtors'  
3 judgment that is in the best interests of the estates for  
4 the Debtors and the committees to cooperate and share  
5 responsibility for pursuing the Debtors' insurance proceeds,  
6 in which they all share a common interest. The Debtors and  
7 the committees, of course, hope to obtain these proceeds  
8 through consensual resolution with our insurers, but certain  
9 insurers have been unwilling to engage in productive  
10 negotiations.

11 Now, given that intransigence, the Debtors and the  
12 committees must prepare and be in a position to seek  
13 litigated relief. This stipulation accomplishes the goals  
14 of cooperation and coordination through the following means.  
15 Briefly, Your Honor, first it confers joint standing, so-  
16 called Housecraft standing on the committees, and authorized  
17 the committees jointly as co-Plaintiffs and co-parties with  
18 the Debtors to assert, litigate, and resolve any or all  
19 claims, causes of action, disputes, or other matters related  
20 to Debtors' insurance on behalf of the estates.

21 To be clear, the Debtors will share their standing  
22 with the UCC and the ad hoc committee. This is not STN and  
23 it's not Commodore; it's Housecraft. The Debtors and the  
24 committees are committed to cooperating and coordinating in  
25 regards to the Debtors insurance causes of action.

14 Now, second, the stipulation states that the  
15 Debtors will not seek approval of any settlement related to  
16 the insurance causes of action without the consent of at  
17 least one of the committees and neither of the committees  
18 will seek such approval without the consent of the Debtors.  
19 The point of this provision, Your Honor, is to avoid  
20 disputes and minimize the need to any messy litigation over  
21 any proposed insurance settlement.

22 Your Honor, the motion, stipulation are a  
23 straightforward application of the Second Circuit's decision  
24 in Housecraft. Housecraft, as Your Honor well knows,  
25 confirmed that a Debtor, like Purdue here, may consensually

1 request, as we have done, that the Court vest committees of  
2 creditor or even a single creditor with joint standing to  
3 pursue estate causes of action alongside the Debtor, so long  
4 as it's in the best interest of the bankruptcy estate and  
5 necessary and beneficial to the fair and efficient  
6 resolution of the case.

7 No one, not even TIG suggests that the motion and  
8 stipulation are not necessary and beneficial to the fair and  
9 efficient resolution of the case. So, there's only one  
10 issue before Your Honor today, and that's whether it is in  
11 the best interests of the estates for the Court to confer  
12 joint standing to the committee under the terms of  
13 stipulation consistent with Housecraft and its progeny, so  
14 that the committees can coordinate and participate with the  
15 Debtors in pursuing the Debtors' insurance causes of action.

16 And we submit, Your Honor, that the answer here is  
17 easy and it's an easy yes. The proposed insurance  
18 stipulation sets up a cooperative framework and marshals the  
19 resources available to the estates, including the expertise  
20 of ad hoc committee's insurance recovery counsel in order to  
21 maximize recovery from the Debtors' insurance causes of  
22 action, while at the same time, minimizing any need of the  
23 parties to the stipulation to jockey for position, second-  
24 guess each other, or to litigate related insurance issues  
25 among the estate's key constituencies.

1                   A single, focused voice aimed at maximizing  
2 recoveries is most certainly in the best interests of the  
3 estate. And arriving at an efficient process to pursue  
4 proceeds from the Debtors' insurance is critical to the fair  
5 and efficient resolution of these cases, as the Debtors'  
6 insurance represents one of the estate's most important  
7 assets, when faced with resolving over 600,000 claims filed  
8 by claimants asserting over \$140 trillion in liability.

9                   Your Honor, not one of the claimants that filed  
10 these 600,000 claims in these cases has objected to the  
11 Debtors' motion or second-guessed the judgment of the  
12 Debtors, the UCC, and the ad hoc committee, not one. The  
13 only party to object is TIG, one of the Debtors' insurers,  
14 and likely a future target of efforts to prosecute the  
15 Debtors' insurance causes of action.

16                   TIG's objection to what really amounts to an  
17 administrative motion is understandably. It has only to  
18 gain from obstructing efforts to bring any proceeds from the  
19 Debtors' insurance into these estates and it is only TIG and  
20 not the estates themselves, as TIG attempts to suggest, that  
21 stands to lose if the motion is granted. That alone is  
22 enough reason to question TIG's argument that the  
23 stipulation is not in the estate's best interests, but most  
24 importantly, each of their arguments fails on its merits, as  
25 well.

1 First, TIG argues that the UCC, a committee,  
2 should not be allowed to participate in insurance disputes  
3 because the information TIG would seek in a dispute might  
4 increase Debtors' exposure to claims brought by the  
5 committee's constituents. Well, as Your Honor well knows,  
6 the information sharing in these cases between the Debtors  
7 and the committees has been extensive and extraordinary and  
8 that is even after the massive amounts of discovery on these  
9 issues and the thousands of prepetition lawsuits before we  
10 even entered this courtroom. So, the notion that discovery  
11 in an adversary proceeding regarding the Debtors' insurance  
12 causes of action would somehow expose the Debtors to  
13 additional exposure in a bankruptcy case with over 600,000  
14 proofs of claim asserting over \$140 trillion in liability  
15 is, respectfully, absurd.

1 as to preserve their own share of estate value.

2                   Third, TIG argues that the hourly rate of the ad  
3 hoc committee's insurance counsel is higher than the rate of  
4 the Debtors' insurance counsel; respectfully, this  
5 completely misses the point. The stipulation is not about  
6 legal-rate arbitrage. The point is that the Debtors will  
7 certainly have to pay for this work once and that all  
8 parties will benefit from coordination, so that the Debtors  
9 do not have to pay for this work twice or three times. This  
10 stipulation ensures that.

11                 Fourth, TIG objects to a purported veto right that  
12 the committees have over any settlement by the Debtors. As  
13 discussed, Your Honor, the stipulation provides that the  
14 Debtors will now file a 9019 motion for improve an insurance  
15 settlement without the consent of at least one of the  
16 committees. This is designed to minimize the chance and  
17 expense of litigation among the estate's chief  
18 constituencies. This is a sound exercise of the Debtors'  
19 business judgment and was agreed to build trust and display  
20 a unit of purpose.

21                 And, by the way, assuring insurers that a  
22 settlement is a settlement and not an opportunity to get  
23 salami-sliced by others in a contested 9019 process is, I  
24 think, a positive, not a negative.

25                 Your Honor, at the end of the day, TIG opposes

1 this stipulation because it has a very significant interest  
2 in reducing any insurance recovery by the estates. Since  
3 the estate's best interests are contrary, this Court should  
4 approve this settlement.

5 So, the two elements of Housecraft are satisfied,  
6 and I could stop here, but, Your Honor, TIG attempts to cite  
7 that the straightforward application of Housecraft by  
8 arguing that general state law limits on creditor standing  
9 would somehow limit standing under federal bankruptcy law.  
10 This is fundamentally mistaken. Federal bankruptcy law, not  
11 state law, governs the question of which party or parties  
12 may bring an estate cause of action on behalf of a Debtor.  
13 And where federal bankruptcy law provides that another party  
14 may bring an estate cause of action, be it a trustee or a  
15 committee or a creditor that has standing, whether under  
16 state law, a creditor or committee would also have separate  
17 standing to bring the claim is simply not relevant at all.

18 Indeed, to be crystal clear, the committees do not  
19 contend that they currently have standing to pursue the  
20 Debtors' insurance proceeds, independent of the Debtor under  
21 New York, Delaware, or any other state's law. If the  
22 committee did so believe, the motion would be unnecessary.

23 It is therefore no surprise that TIG cites no  
24 Second Circuit authority that puts any state law constraints  
25 on Housecraft standing. Indeed, Judge Wiles over the summer

1 rejected any attempt to import state law standing doctrines  
2 into bankruptcy standing, and I'm referring to the McClatchy  
3 case that we heard in July that we included a discussion in  
4 our brief.

5 In that case, Judge Wiles explained that what a  
6 committee seeks to do under the STN trilogy is to be  
7 authorized:

8 "To act as the estate representative to pursue the  
9 claims that belong to the estate and to do so as a matter of  
10 federal bankruptcy law, not state law."

11 In other words, slightly paraphrasing Judge Wiles,  
12 and I'm again quoting, the committee is not asking the Court  
13 to permit a derivative claim under the authority of Delaware  
14 law or under other state law because, again, "the claims at  
15 issue here plainly belongs to the Debtors' estate and should  
16 be pursued on behalf of the estate."

17 Now, TIG relies on a few decisions from the  
18 District of Delaware, which appear to hold that a committee  
19 vested with standing to sue, sues not as the estate, but as  
20 a collection of creditors and, thus, only maintains suits  
21 that a creditor could maintain under state law. And I'm  
22 referring to the cases they cite, the Dura case, the HH  
23 Liquidation case, Citadel. But these decisions are simply  
24 inconsistent with the Second Circuit's STN, Commodore,  
25 Housecraft jurisprudence.

1                   The Second Circuit makes clear that a party vested  
2 with standing is not prosecuting a cause of action that may  
3 prosecute it in its own name, but rather, is suing in the  
4 name of the estate by suing alongside with or stepping into  
5 the shoes of the Debtor.

6                   Now, perhaps these decisions flow from the fact  
7 that the Third Circuit's Cybergeneics doctrine is somewhat  
8 different from the Second Circuit's doctrine. Among other  
9 important differences, Cybergeneics does not provide an  
10 analog of Housecraft. But, in any event, it's clear that  
11 these cases have no application to this case because the  
12 committees here would be sharing the Debtors' standing, just  
13 as a creditor in Housecraft shared the standing of the  
14 trustee.

15                  And as a reminder, Your Honor, the Second Circuit  
16 in Housecraft went so far as to emphasize that:

17                  "The case for recognition of a creditor's standing  
18                  ... is more compelling, whereas here, the trustee or Debtor-  
19                  in-possession, is also named plaintiff."

20                  Second, TIG also conflates the concept of  
21 Housecraft standing on the one hand and attempts by a  
22 committee to intervene in a Debtors' cause of action in its  
23 own right under 1109(b), which provides that parties in  
24 interest have a right to appear and be heard. But the  
25 proposed insurance stipulation is not grounded on 1109, so

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1 this entire line of TIG's argument is simply irrelevant and  
2 in addition to being irrelevant, it's also completely wrong.

3 It's clear under Second Circuit decision in Caldor  
4 in 2002, that even in the absence of the stipulation, the  
5 committees would undoubtedly have an unconditional right to  
6 intervene and to appear and be heard in every adversary  
7 proceeding involving the Debtors' insurance causes of  
8 action. And, further, because Caldor's holding does not  
9 draw the core/non-core distinction that TIG hopes to  
10 interject, TIG's attempt to raise and litigate that issue  
11 now as opposed to do and in connection with full briefing in  
12 an adversary proceeding regarding the Debtors' insurance  
13 causes of action is not only procedural improper, but it's  
14 just plain wrong.

15 Also, the allegedly, factually similar -- that's a  
16 quote -- case identified by TIG to support its position,  
17 that case out of Alaska, the Catholic Bishop case suffers  
18 from at least three defects. First, it did not involve a  
19 Debtors' consent to a committee gaining standing, but,  
20 rather, was addressing 1109(b). Second, the Court there, I  
21 believe it mistakenly conflated the interests of the  
22 committee with those of an individual tort claimant. And  
23 most importantly, in addressing Section 1109(b), the Court  
24 there expressly rejected Caldor, which is binding, Second  
25 Circuit precedent for the principle that a creditor has

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1 unconditional rights to intervene in an action commenced by  
2 a Debtor and, instead, cited other Circuit's approach to  
3 intervention.

4 Your Honor, finally, TIG's express attempts to  
5 litigate the motion for relief from stay without notice in  
6 summary fashion in a paragraph is entirely improper and  
7 should be denied at this time without prejudice.

8 Procedurally, this motion was never adjourned or re-noticed  
9 as direct by the Court at the January 24th, 2020, omnibus  
10 hearing, and TIG raising the issue in an objection to an  
11 unrelated motion certainly does not comply with the 21-day  
12 notice requirement that is required under the case  
13 management order for all motions to lift stay.

14 Substantively, as noted in the Debtors' reply,  
15 TIG's motion for relief from stay is still inappropriate for  
16 decision and should be denied. As foreshadowed by the  
17 stipulation and TIG's vociferous objection to it, it is  
18 likely to be very soon that the Debtors and committees  
19 decide to litigate in this court the claims TIG argues  
20 should be subject to arbitration.

21 When that happens, the parties to the proceedings  
22 will be able to fully brief and argue those important  
23 issues, but that day is not today.

24 In sum, Your Honor, it is clear that TIG has  
25 fallen well short of demonstrating that the stipulation is

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1 not in the best interests of the estates and the silence and  
2 assent of each and every one of the creditors of these  
3 estates certainly speak much louder than the self-serving  
4 suggestion of a target insurer that it knows better than  
5 everyone else what is in the estate's best interests.

6 Accordingly, TIG's objection should be overruled  
7 in its entirely, the Debtors' motion should be granted, and  
8 the proposed insurance stipulation, among the Debtors, the  
9 UCC, and the ad hoc committee should be entered.

10 Your Honor, unless you have any questions, I would  
11 propose to turn the podium over to my colleague Andrew  
12 Troop, representing the non-consenting states, who I believe  
13 wants to be heard on this issue, as well.

14 THE COURT: Okay. Well, I do have one question,  
15 and I probably ought to hear -- well, I should definitely  
16 hear from you. I should also hear in anyone who's a party  
17 to this stipulation disagrees with your answer.

18 The Debtors' response to the objection by TIG, or  
19 T-I-G, relies largely and ultimately, perhaps entirely, on  
20 the concept embody in the Commodore and Housecraft cases,  
21 that when one is conferred standing under those cases, one  
22 has standing to bring the Debtors' causes of action on  
23 behalf of the estate, generally, the 541 estate.

24 And in reading the stipulation, paragraph I, which  
25 starts on page 3 defines the term Debtors' insurance causes

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1 of action and, at least, based on the plain terms of the  
2 defined term, Debtors' insurance causes of action, it would  
3 appear clear to me that what the parties are agreeing to  
4 cooperate on and for which standing is conferred or joint  
5 standing along with the Debtor, ala Housecraft, are causes  
6 of action that belong to the Debtor.

7 The definition that precedes the defined term  
8 arguably could be read a little more broadly. It is any and  
9 all claims, causes of action, disputes, or other matters  
10 regarding the Debtors' insurance. And the authorization  
11 paragraph, paragraph 1 on page 4, says subject to the terms  
12 of the stipulation and order, the official committee and the  
13 ad hoc committee are hereby granted leave, and shall each  
14 have joint standing with the Debtors to assert, litigate,  
15 and resolve in each case, co-plaintiffs and co-parties with  
16 the Debtors, any and all claims, causes of action, disputes,  
17 or other matters regarding the Debtors' insurance causes of  
18 action on behalf of the Debtors' estates.

19 Now, I read that to mean in paragraph 1,  
20 particularly in light of the last clause, to be on behalf of  
21 the Debtors' estates and no one else. One could, I guess,  
22 argue that the cooperation provisions of this stipulation  
23 could also cover potentially actions that the two committees  
24 might have on their own, but I just want confirmation that  
25 that's not what's contemplated here. What's contemplated is

1 actions on behalf of the Debtors' estates, exclusively.

2 Is that correct?

3 MR. KAMINETZKY: One hundred percent, Your Honor.

4 That is my intention and apologies if it's unclear. But

5 it's a purely, you know, Housecraft, you know, they can

6 jointly assert with us, (indiscernible) you know, the

7 insurance causes of action that the Debtors have, it doesn't

8 mean to expand or include anything else, other than the

9 Debtors' causes of action.

10 THE COURT: Okay. I don't think it's unclear, but  
11 in my experience in insurance litigation, at times,  
12 perfectly clear language can be asserted to be unclear and I  
13 wanted the record to be clear that this stipulation pertains  
14 only to Debtors' estate causes of action or causes of action  
15 that belong to the Debtors and their estate.

16 And I mean assuming from the silence by the ad hoc  
17 committee and the official committee that that's their view,  
18 also.

19 MR. SHORE: Your Honor, this is Richard Shore of  
20 Gilbert, LLC on behalf of the ad hoc committee, and I can  
21 confirm that, as well, on behalf of the ad hoc committee.

22 THE COURT: Okay.

23 MS. BRAUNER: Good morning, Your Honor.

24 Sara Brauner, Akin Gump, on behalf of the official  
25 committee. We confirm it, as well.

1 THE COURT: Okay. Very well.

2 All right. That was my one question, and I am now  
3 going to hear briefly from, I think, the non-consenting or  
4 the ad hoc committee of non-consenting states. I believe  
5 that's who you were going to introduce, Mr. Kaminetzky, and  
6 anyone else in support of this motion, if they want to say  
7 anything more.

8 MR. KAMINETZKY: That's correct, Your Honor.

9 Mr. Troop has to say something in support and, as  
10 I mentioned, in the up front, unless Your Honor has specific  
11 questions, which, indeed, the committee and the official  
12 committee and the ad hoc committee was just relying on me,  
13 subject to any rebuttal.

14 THE COURT: Okay. Very well.

15 MR. TROOP: Thank you, Your Honor.

16 This is Andrew Troop, on behalf of the ad hoc  
17 group of non-consenting states. I hope that I am clearly  
18 audible.

19 THE COURT: I can hear you fine, thanks.

20 MR. TROOP: Thank you, Your Honor.

21 Your Honor, I will be brief. As Mr. Kaminetzky  
22 said, I think other than coming before you and asking for an  
23 adjournment, this may be the first time that the four major  
24 active groups in this case are here with a united view as to  
25 what is in the best interests of these estates, and to be

1 clear, the non-consenting states group not only believes  
2 it's in the best interests of these estates for the Debtors'  
3 insurance causes of action to be asserted, litigated, if  
4 possible, resolved now, but it is in the best interests of  
5 these estates for it to be done by this triad of parties.

6 They represent a broad cross-section. Two are  
7 fiduciaries. One, in particular, the ad hoc committee's  
8 lawyers are, you know, at the Gilbert firm, this is what  
9 they do and they do so well, efficiently, and always with  
10 the view towards what advances the best interests of the  
11 estate in the recognition that the monetization of the  
12 Debtors' insurance policies will, regardless of how this  
13 case resolves itself through a plan of reorganization,  
14 benefit all creditors.

15 We are supportive. We are also very -- we think,  
16 also, that the recognitions in the motion and in the  
17 statement of common interests that not only the Debtors'  
18 committee and the ad hoc committee have, but other  
19 committees have. We think that's absolutely right, and we  
20 are confident that the checks and balances put into the  
21 stipulation to ensure efficiency and voice are the right way  
22 to go here.

23 We are also convinced and can understand that we  
24 will be on the side parties in the sense of we are common  
25 interests parties, and we will be kept apprised and the

1 like, but no more lawyers were necessary, and no more  
2 representatives were necessary to achieve the goals here  
3 that everyone shares.

4 So, I won't repeat anything on the legal side,  
5 which Mr. Kaminetzky covered fully, but at its core, this  
6 stipulation strikes the appropriate balance to advance the  
7 Estate's interests at a time when it's important to do so  
8 and I would urge the Court to approve it. Thank you, Your  
9 Honor.

10 THE COURT: Okay. Thank you.

11 All right. I should have said this at the  
12 beginning. I've read the pleadings on this and having heard  
13 oral argument on behalf of the movants, I'm happy to hear  
14 oral argument on behalf of TIG, although, again, I have  
15 reviewed the pleadings from both sides.

16 MR. CALHOUN: Good morning, Your Honor.

17 This is George Calhoun of Ifrah Law on behalf of  
18 Ironshore Specialty Insurance Company, formerly known as TIG  
19 Specialty Insurance Company. I also have Josh Wirtshafter  
20 of Kennedys, who's counsel in the pending arbitration.

21 Can you hear me okay, Your Honor?

22 THE COURT: Yes, I can hear you fine, Mr. Calhoun.

23 MR. CALHOUN: Okay. Thank you, Your Honor.

24 So, I know you've read the pleadings. I won't  
25 repeat what's in there, but I did want to respond and

1 address to some of the points raised by counsel for Purdue.  
2 First, I appreciate the clarification that they're relying  
3 strictly on *Housecraft*, not on 1109(b). *Housecraft* is,  
4 obviously, a controlling Second Circuit decision and  
5 depending on how Your Honor interprets it, it's either not  
6 applicable or there's a Circuit split, or a third  
7 possibility is it's got to be simply applied and find that  
8 there's a -- it's not in the best interests of the estate  
9 and let me explain why.

10 *Housecraft* dealt with an avoidance action under  
11 Section 548 and in that case, the creditor in that case,  
12 BMT, funded the litigation that the trustee otherwise could  
13 not undertake, and so it provided a clear benefit to the  
14 estate's causes of action, otherwise it would not have been  
15 brought at all. So, *Housecraft*, so that situation is  
16 completely different than this case where the Debtor is  
17 proposing not only to pay its counsel, but two other sets of  
18 counsel to pursue an estate cause of action.

19 *Housecraft* is also not applicable here, Your  
20 Honor, because it didn't direct at all in that case where  
21 there was a controlling state law that says that this type  
22 of action could not be brought by the third party.  
23 *Housecraft* doesn't necessarily purport to override such  
24 state law. There's nothing in the Bankruptcy Code that pre-  
25 empts state law that says a creditor or a group of creditors

1 can bring a cause of action against an insurer, which they  
2 concede they can't. But it's not the case that there's any  
3 sort of express preemption or even applied preemption  
4 because they haven't shown any inconsistency here. And,  
5 obviously, this is not STN where they've made a demand and  
6 haven't been able to pursue it. So, I think those on  
7 points, Housecraft just doesn't apply. It's a different  
8 situation. There's no need to create a Circuit split  
9 between the Second Circuit and the Third Circuit.

10 THE COURT: Well, what's the Third Circuit split?  
11 I'm not clear on that. Are you referring to the Delaware  
12 Bankruptcy Court cases, obviously, those are not Circuit-  
13 level cases.

14 MR. CALHOUN: No, but as Debtors' counsel referred  
15 to, it's just a different level of how they apply these  
16 principles. I don't know that the Third Circuit objected  
17 (indiscernible), but it's going to get to that issue.

18 THE COURT: I guess the other point I would ask  
19 you about is the Court in Housecraft, and, of course, it's  
20 part of a trilogy, dealt with a statute, 548 of the  
21 Bankruptcy Code, which, specifically, confers standing on  
22 one party, the trustee or Debtor-in-possession.

23 To me, that's not also any specific issue of or  
24 raising any sort of issue that would involve preemption  
25 principles. It involved standing principles; i.e., a party

1 can take the place of and step into the shoes of a trustee  
2 or Debtor in possession under a particular statute to assert  
3 the Debtors' rights and I'm not sure that there is any real  
4 distinction there between a federal statute and a state  
5 statute.

6 It's really a question of who, as a fiduciary,  
7 under the ultimate supervision of the Bankruptcy Court, can  
8 act on behalf of the Debtor and its -- estate.

9 MR. CALHOUN: Correct, Your Honor.

10 And what the Second Circuit said in *Housecraft*  
11 with that, if you look at that question, you have to  
12 consider what's in the best interests of the estate and --

13 THE COURT: No, I understand that, but I think one  
14 would have to admit that the target of potential litigation  
15 is probably the least likely person to listen to, as to  
16 what's in the benefit of the estate, as opposed to the  
17 Debtor and fiduciaries, or tens of thousands of creditors.

18 MR. CALHOUN: I understand that, Your Honor, and,  
19 obviously, you can factor in that issue, but as counsel for  
20 an insurer, we do feel strongly that our coverage litigation  
21 should be with our insurer and not with lawyers for the  
22 creditors. It does create (indiscernible) and this really  
23 gets into some of the things I want to talk about on that  
24 issue, on best interests of the estate and the problems that  
25 this causes.

1 I'd just note from the outset, counsel for the  
2 Debtors, at one point in his presentation, made the comment  
3 that some of the insurance companies were trying to obstruct  
4 relief and were (indiscernible) that they were delaying. I  
5 just wanted to point out that, you know, we asked Your Honor  
6 nearly a year ago for relief from the stay to pursue our  
7 insurance coverage action and the Debtors approached us in  
8 July and said, hey, would you like to negotiate?

9 We said, yes. We didn't hear anything back from  
10 them again until October when they ignored a response and  
11 said would you like to negotiate?

12 We said sure, but if it doesn't work out, we'd  
13 like to get relief from stay to finish resolving these  
14 issues. So, we have absolutely not refused (indiscernible);  
15 it's been the opposite. (Indiscernible) impatient while  
16 we've been waiting for some further resolution and the Court  
17 directed at our motion at our hearing on the motion for  
18 relief from stay.

19 Something else that was said in terms of the  
20 presentation that is really critical, they said there should  
21 be a single voice, but what they're really asking for is  
22 three voices. They're asking for other groups to represent  
23 not the Debtors' interests or the insured's interests, but  
24 the interests of creditor groups. And, certainly, to the  
25 extent they had a settlement or something of that nature,

1 those parties are going to have the right to weigh in and we  
2 understand the desire to build consensus on that and don't  
3 really have a problem with that, but we do have problem with  
4 having three parties in our litigation multiplying the  
5 litigation, which is not in the estate's best interests;  
6 It's going to multiply the amount of work that's required.  
7 There's been no allegation and there's no contention that  
8 the Debtors don't want to maximize their -- the value of  
9 their insurance. They're represented by one of the largest  
10 and career insurance groups in the country at Reed Smith.

11           And if we have three parties in our case, the  
12 other half is another issue, as much as we'd like this done  
13 as soon as possible, I have serious doubts, Your Honor, that  
14 an insurance litigation is going to be finished before this  
15 confirmation.

16           We're going to then have parties and the  
17 litigations who represent committees that will be most  
18 likely dissolved. I know the stipulation doesn't control  
19 the issue of what happens but that creates a very serious  
20 concern about delay and problems in our ensuing coverage  
21 litigation.

22           In fact, Your Honor, just -- I don't see the  
23 benefit, on a cost benefit or any other basis, to create  
24 those future problems in litigation when the Debtor's  
25 perfectly competent and willing to step in and do this.

1                   We have no problem if they consult with the  
2 committees, but the committees don't need to be parties.  
3 The committees being parties, not to represent the estate's  
4 interests, but to represent their own, which is what they're  
5 saying. They're there to represent the interests of all  
6 these creditors. It's what's been alleged in the papers and  
7 it was what was alleged today.

8                   There's no need for it in this case. The Debtors  
9 have -- are perfectly capable of funding this litigation.  
10 They're perfectly capable of pursuing it.

11                  It's -- you know, we're happy that they can reach  
12 consensus with these groups on something. I'm sure they're  
13 -- that can aid in their discussions but it -- it's got  
14 nothing to do with it -- with the pursuit in this litigation  
15 in an effective manner and efficient manner which is in the  
16 estate's interests.

17                  Which is why we raised our pending lift stay  
18 motion. We're happy, Your Honor -- we recognize that either  
19 way there's some response and not on notice. We're happy to  
20 file a notice and have this heard.

21                  We frankly were waiting and hoping that there'd be  
22 some resolution or remediation before (indiscernible) this  
23 motion prompted it.

24                  And so, Your Honor, we think --

25                  THE COURT: That's the problem with telephonic

1 hearings. I can't -- you have more to say, I guess.

2 MR. CALHOUN: No, go ahead, Your Honor.

3 THE COURT: No, no. I thought you might have been  
4 done because there was a pause. But you were just catching  
5 your breath.

6 MR. CALHOUN: Yeah. I was -- I was just looking  
7 at my notes because they're a little bit scrambled. But,  
8 yes, Your Honor, you know, so in short, we think there's  
9 good reasons here not to interfere with the state law  
10 standing requirements that would ordinarily -- ordinarily  
11 would preclude these third parties from participating in  
12 this litigation where there's no need to have them in there  
13 from a funding or from a motivation standpoint.

14 It avoids any conflict with state law or between  
15 other districts and circuits and, frankly, Your Honor, if  
16 the term sheet that's proposed is incorporated into the plan  
17 and that plan is confirmed, these creditor parties are going  
18 to replace the Debtor down the road anyway and, you know,  
19 that might be a more appropriate time to deal with that  
20 issue.

21 THE COURT: Okay. Then you wouldn't raise  
22 (indiscernible) cases then?

23 MR. CALHOUN: (Indiscernible) I can answer -- no,  
24 Your Honor. What I'm saying is if what they really want is  
25 to control the insurance litigation, if the plan proposes

1 that creditors become the new owners of the company, which  
2 is my understanding of what was proposed, when they become  
3 the new owners of the company, they'll be in control of  
4 their insurance litigation.

5 THE COURT: Okay.

6 MR. CALHOUN: They're really sort of prejudging  
7 that issue by asking that the -- not co-counsel for the  
8 estate, but joint parties is what they're asking for, Your  
9 Honor. They're not asking, let's have one voice on behalf  
10 of the Debtors in this insurance litigation. Let's have  
11 three voices which is not quite the same thing.

12 THE COURT: Okay. Very well. Anyone else have  
13 anything more to say?

14 MR. SHORE: Your Honor, Richard Shore on behalf of  
15 the ad hoc committee and just very, very quickly.

16 Mr. Calhoun said that -- that the Debtor and the  
17 two committees reached out to take -- regarding settlement  
18 to take -- said, sure, you know, let's sit down and they  
19 didn't hear back from us.

20 What Mr. Calhoun left out is the take place, the  
21 condition, on its willingness to sit down with us which was  
22 that we agree or the Debtor agree that any disputes  
23 regarding insurance coverage be resolved through  
24 arbitration.

25 Obviously, that was not an acceptable condition to

1 proceeding with settlement negotiations.

2 Mr. Calhoun also said that -- and I should say,  
3 you know, more broadly, we did seek to negotiate with all of  
4 the insurers to enter into settlement negotiations. They  
5 would have got little, not no, but little traction.

6 We think approving the stipulation and allowing  
7 the Debtor and committees to initiate litigation will focus  
8 the insurers on the need to resolve the coverage issue,  
9 enhance prospects of settlement and, to the extent that we  
10 can't settle during the bankruptcy case, we'll start this --  
11 this -- the insurance disputes on the road to judicial  
12 resolution sooner rather than later. So we think that's  
13 very important.

14 And then, finally, Mr. Calhoun said that it was  
15 unlikely that the litigation would be resolved during the  
16 bankruptcy case. That, in our view, is a reason to approve  
17 the stipulation, not not to approve it.

18 It would create approving a stipulation allowing  
19 the committee -- the committees and the Debtor to work  
20 together in coordination now, will create a smooth  
21 transition to what happens, post-confirmation.

22 THE COURT: Okay. Thank you. All right.

23 I have before me a motion by the Debtors in these  
24 cases for approval of a stipulation between the Debtors and,  
25 on the one hand, and the official unsecured creditors

1 committee and the ad hoc committee of governmental entities,  
2 of states and governmental entities, that is -- which I will  
3 refer to as the ad hoc committee.

4 With respect to the Debtors' insurance causes of  
5 action, the Debtors are parties to many difference insurance  
6 policies and, as often happens in bankruptcy cases involving  
7 rights to insurance, as well as outside of bankruptcy, there  
8 appear to be disputes or potential disputes between the  
9 Debtors and their insurers about the extent of coverage  
10 under those policies.

11 The stipulation is brief and provides, first -- so  
12 the terms of the stipulation are that the two committees are  
13 granted leave and shall have joint standing with the Debtors  
14 to assert, litigate and resolve any and all claims, causes  
15 of action, disputes, or other matters regarding the Debtors'  
16 insurance causes of action on behalf of the Debtors'  
17 estates.

18 It is, I believe, clear, in particular because of  
19 the last clause of that paragraph one of the stipulation but  
20 also based on the representations made on the record today,  
21 that standing and the stipulation as a whole pertains to  
22 only the Debtors' estates' causes of action in respect of  
23 their insurance policies.

24 The committees acknowledge that they currently do  
25 not have their own causes of action in respect of the

1 insurance policies; i.e., they don't have direct action  
2 rights at this time and they're not under the stipulation  
3 being conferred direct action rights or such standing or  
4 even derivative standing but, rather, if I granted the  
5 stipulation, standing along with the Debtor, in each case,  
6 on behalf of the Debtors' estates with respect to the  
7 Debtors' insurance causes of action.

8 The stipulation also prescribes when the Debtors  
9 can seek approval of a settlement of causes of action and  
10 prescribes the rights of the two committees and prohibits  
11 their ability to seek approval of any settlement of the  
12 insurance causes of action without the Debtors' consent.

13 That's in paragraph two of the settlement and then  
14 finally in paragraph three of the settlement provides that  
15 the parties, that is the Debtors and the two committees,  
16 shall confer and work cooperatively regarding litigation of  
17 the Debtors' insurance causes of actions and the parties  
18 shall endeavor to make all decisions by agreement among the  
19 parties subject to applicable law.

20 Given that paragraph and the representations in  
21 the Debtors' reply to the sold objection to the motion,  
22 which is by one of the insurers, Ironshore Specialty  
23 Insurance Company, which people have been referring to in  
24 this matter by its former name, T-I-G or TIG Specialty  
25 Insurance Company, they will work cooperatively to proceed

1 with any litigation efficiently from the perspective of the  
2 Debtors' estate and, of course, will also obviously work  
3 cooperatively because they need to, under paragraph two of  
4 the settlement, with regard to any settlement negotiations.

5 The Second Circuit has well developed case law on  
6 the conference of standing on third parties where standing  
7 is, by statute, conferred only on the trustee or a debtor-  
8 in-possession, where the conference of standing would permit  
9 the third party to have standing to pursue estate causes of  
10 action; i.e., causes of action on behalf of the debtor in  
11 respect of its property and estate.

12 Starting with *Commodore International Ltd. v.*  
13 *Gould (In Re Commodore International Ltd)*, 262 F3d. 96, 100,  
14 (2nd Cir. 2001) and proceeding thereafter to *Blinka v.*  
15 *Mirrored Industries USA, Inc., In Re Housecraft, Inc.*, 310  
16 F3d., 64 (2nd Cir. 2002), the circuit has recognized that  
17 where a trustee or debtor-in-possession with standing by  
18 statute to pursue an estate cause of action or an estate  
19 property right, agrees or consents to conferring that  
20 standing on a third party, the court will grant that  
21 standing and approve that agreement if doing so is (a) in  
22 the best interests of the debtor's estate and (b) necessary  
23 and beneficial to the fair and efficient resolution of the  
24 bankruptcy case or proceeding.

25 In *Housecraft*, the Second Circuit recognized joint

1 standing; i.e., standing on behalf of both the debtor and a  
2 third party at the same time to pursue estate causes of  
3 action and that is what is being proposed here as well.

4 No creditor of the estate has objected to this  
5 motion and, indeed, the three groups collectively  
6 representing essentially all of the creditors, affirmatively  
7 support the motion; that is, the two parties who are parties  
8 to the stipulation along with the Debtors, the official  
9 committee of unsecured creditors and the ad hoc committee.  
10 And, in addition, the ad hoc committee of so-called non-  
11 consenting estates affirmatively support the motion as, of  
12 course, do the Debtors.

13 The only party objecting to the motion is one of  
14 the potential litigation targets, TIG, an insurer. In the  
15 Housecraft case, the circuit noted that where the debtor is  
16 remaining as a party to a litigation and consenting to joint  
17 standing, the court is well within its discretion to be  
18 differential to that decision.

19 I believe that's particularly the case where all  
20 of the key parties-in-interest in the case with an economic  
21 stake in maximizing insurance proceeds recovery agree as  
22 well to the conference of standing.

23 The objection asserts a few bases in support of  
24 that objection. The first is that the grant of standing  
25 might confuse or otherwise impair the Debtors' estates'

1 rights in respect of the Debtors' insurance claims.

2 The argument is that under applicable state law,  
3 only the Debtor would have the ability to pursue these  
4 causes of action at this time.

5 Of course, that is also the case or was also the  
6 case in the Housecraft and Commodore cases with the  
7 exception that the applicable statute there was a section  
8 under Chapter 5 of the Bankruptcy Code that conferred  
9 standing specially on the trustee or debtor-in-possession.

10 Nevertheless, the courts, as I have noted,  
11 accorded standing to third parties to act on behalf of the  
12 Debtor's estate.

13 The same logic, to my mind, would apply wherever a  
14 third party would be acting literally on behalf of the  
15 debtor's estate whether that cause of action be under state  
16 or federal law.

17 The objector points to three or four cases decided  
18 by the Bankruptcy Court for the District of Delaware as  
19 authority for the contrary position that, in fact, the two  
20 committees even if accorded standing to pursue the cause of  
21 action would, in fact, not have such standing.

22 I have read those cases carefully and I believe  
23 they are distinguishable and not, in fact, contrary to the  
24 grant of standing here under paragraph one of this proposed  
25 stipulation and order.

1                   Perhaps the clearest example of that is the most  
2 recent of those cases, In Re Citadel Watford City Disposal  
3 Partners, 603 B.R. 897 (Bankr. D. Del. 2019). In that  
4 case, pre-bankruptcy -- I'm sorry, during the bankruptcy  
5 case, before confirmation of the Chapter 11 plan, the  
6 official creditors committee was accorded standing to bring  
7 estate causes of action.

8                   Under the plan, the liquidation trustee was given  
9 that status as the debtor's successor.

10                  Nevertheless, the official committee brought the  
11 litigation as a derivative matter for breach of fiduciary  
12 duty claims under Delaware's Limited Liability Company Act,  
13 or Limited Partnership Act.

14                  Later, the liquidation trustee sought to modify  
15 the caption of the case to include the liquidation trustee  
16 as a plaintiff or the plaintiff, as a plaintiff rather,  
17 asserting that this was just a procedural matter and of not  
18 substantive import.

19                  The court, Judge Kerry, in analyzing two prior  
20 decisions by his colleagues, which I'll get to in a moment,  
21 concluded, under the plain terms of the Delaware Limited  
22 Partnership statute, that as of the time that the litigation  
23 was commenced, the plaintiff did not have standing to bring  
24 the cause of action.

25                  At that time, when it was commenced, the official

1 unsecured creditors committee was the plaintiff and it was  
2 bringing the action on a derivative basis which the Delaware  
3 statute precluded.

4 The court, I believe, was clear that the  
5 liquidation trustee was taking the standing, at that point,  
6 as an assignee of the liquidation -- of the unsecured  
7 creditors committee and concluded that the liquidation  
8 trustee also did not have standing. Id. at 901 thru 902 as  
9 well as 907.

10 The court's whole focus was on derivative  
11 standing, not standing as conferred by the Bankruptcy Court  
12 to bring causes of action on behalf of the estate but rather  
13 derivative standing under Delaware law.

14 That was also the focus in the two cases that  
15 Judge Kerry construed, Judge Gross's case, In Re HH  
16 Liquidation, LLC, 590 B.R. 211 at 284 through 85, (Bankr. D.  
17 Del. 2018) and In Re Pennysaver USA Publishing, LLC, 587  
18 B.R. 445, 467 (Bankr. D. Del. 2018).

19 In each of those cases, the courts were focused on  
20 the bringing of derivative claims for breach of fiduciary  
21 duties owed to creditors of either -- of a limited liability  
22 company in that case as opposed to an LP in the Watford City  
23 case.

24 The whole focus was on derivative standing, not on  
25 direct standing, as conferred by a court order which the

1 courts did not discuss at all.

2 I believe if that issue had been raised and  
3 focused on by them, they would have reached the same result  
4 which is that this was an action, if it could be brought by  
5 the company, would be brought by the company and its  
6 successors as opposed to someone suing derivatively in the  
7 name of the company which was precluded by the Delaware  
8 statutes.

9 I believe, therefore, that there would be no  
10 impediments to standing here in a litigation that would name  
11 the Debtor and the two committees as co-plaintiffs in each  
12 case, acting on behalf of the Debtor.

13 Of course, if some court disagreed with that  
14 analysis, although arguably it would now be collateral  
15 estoppel as to TIG, since it's actually been litigated, the  
16 solution would be simple. You would drop the two committees  
17 and continue on with the Debtor or its successor under a  
18 plan.

19 But that limited prospect, in my view, is no  
20 reason to deny approval of the stipulation as not being in  
21 the best interests of the estate.

22 The objection also argues that, as a cost and case  
23 management matter, the stipulation is not in the best  
24 interests of the estate. Again, I believe that the Debtor  
25 has a low bar to meet here given that it would remain a

1 party to a litigation and given, in addition, the lack of an  
2 objection by anyone except a potential target of the  
3 litigation.

4 The other prong of the test bears a little more  
5 scrutiny than that, however, i.e., the prong that requires  
6 the conference of standing to be necessary and beneficial to  
7 the fair and efficient resolution of the bankruptcy  
8 proceedings.

9 TIG argues that it will now be confronting three  
10 plaintiffs potentially instead of one and that would  
11 multiply the conduct of any litigation and unnecessary --  
12 and unnecessarily complicates settlement discussions.

13 I've considered that argument carefully; first,  
14 whether the focus should even be on the other party to the  
15 litigation as opposed to the conduct of the bankruptcy case  
16 generally but even putting the focus on the former point, as  
17 opposed to the later one, which I believe is probably not  
18 the right result, but I will do it anyway, it appears clear  
19 to me that in respect of settlement discussions and the  
20 settlement process, in the context of this particular case,  
21 having the two committees with standing to particulate in  
22 settlement discussions under the construct of paragraph two  
23 of this stipulation is beneficial not only to the estates  
24 generally but also to the other party to those settlement  
25 discussions; i.e., the insurer.

1                   In this case, the Debtors have been clear, from  
2 the start, and this is far from the norm in Chapter 11  
3 cases, that they, in one form or another, will make all of  
4 their assets, including their insurance assets, available  
5 for their creditors.

6                   The creditors, as a practical matter, therefore,  
7 in their views, are of high importance in the Court's  
8 determination as to the approval of any settlement, directly  
9 involving the two committees therefore in settlement  
10 discussions will cut short any further attack on a  
11 settlement or litigation over a settlement, or further  
12 negotiations to improve the terms of a settlement,  
13 previously negotiated by the Debtors because the key  
14 parties-in-interest are actually there with standing to  
15 participate directly as a party with standing in the  
16 settlement process.

17                  As far as litigation is concerned, it is clear  
18 from paragraph three of the stipulation as well as the  
19 representations made in support of the motion that the  
20 parties, as they have done here, will coordinate their  
21 efforts so that I do not expect, and I believe it would be  
22 perfectly incumbent upon a court or an arbitration panel to  
23 so limit if my expectation is not followed by the Debtor and  
24 the two committees to prevent unnecessary duplication of  
25 argument and discovery and any other aspects of the

1 litigation that would be unduly burdensome and costly to the  
2 defendant in that litigation.

3 As was the case here, the Debtors' counsel spoke  
4 on behalf of the three parties. They coordinated on a joint  
5 reply and I'm assuming that they would do so in similar  
6 fashion with regard to any litigation pleadings and the  
7 conduct of litigation hearings so that you would not have,  
8 for example, three different parties standing up and  
9 objecting to the admissibility of any particular exhibit or  
10 question of a witness or the like. But that they would  
11 coordinate those to be efficient.

12 I think a trial court would have -- be well within  
13 its rights to rein in contrary behavior if it occurred  
14 notwithstanding paragraph three of the stipulation.

15 So, it does not appear to me, even I were focusing  
16 primarily on the insurers here, and their interests in fair  
17 and efficient resolution of the bankruptcy proceedings, as  
18 opposed to the fair and efficient resolution of the  
19 proceedings generally, to conclude that this motion should  
20 be denied.

21 To the contrary, I believe it should be granted.

22 I also believe it should be granted because I see  
23 no reason for any delay in resolving the Debtors' insurance  
24 claims and rights before confirmation of a plan.

25 Of course, the plan itself can modify again who

1 would have standing to pursue those claims and rights on  
2 behalf of the Debtors' estate but there's no reason to wait  
3 for confirmation of a plan to continue with the process  
4 that's thus far has been, it appears to me, rather desultory  
5 but now with the approval of this motion, I believe, will  
6 gain speed along with seriousness given the joint  
7 involvement of the two committees.

8 So, I will grant the motion and Mr. Kaminetzky you  
9 can email me the proposed order. You don't need to formally  
10 settle it on Mr. Calhoun but you should copy him on the  
11 email so he can make sure it's consistent with my ruling and  
12 doesn't change anything as far as the stipulation is  
13 concerned.

14 MR. KAMINETZKY: Thank you, Your Honor.

15 THE COURT: There -- as noted, there's no motion  
16 currently before me scheduled for a hearing for relief from  
17 the automatic stay by TIG. Of course, with proper notice, I  
18 would hear such a motion although I would hope that, at this  
19 point, now that the lines of authority are clear, the  
20 parties will engage in trying to resolve these issues before  
21 sending them to litigation, whether that would be in this  
22 Court, in a district court or in an arbitration.

23 So I think that concludes this matter and we can  
24 move on to the next matter on the calendar.

25 MR. KAMINETZKY: Yes, Your Honor.

1                   Again, Ben -- Benjamin Kaminetzky. I'm going to  
2 turn the virtual podium over to my colleague, Jim McClammy  
3 for items two and three on the agenda.

4                   THE COURT: Okay.

5                   MR. MCCLAMMY: Good morning, Your Honor.

6                   Jim McClammy of Davis Polk on behalf of the  
7 Debtors.

8                   Items two and three are the motions that were  
9 brought pro se by Ms. Deborah Clonts; one motion for claim  
10 payment and that, two, a motion, and amended motion for the  
11 lifting of the automatic stay.

12                  I believe I see that Ms. Clonts is on the phone.

13                  THE COURT: Right.

14                  MS. CLONTS: Yes, I'm here.

15                  THE COURT: (Indiscernible) what I was about to  
16 say. So Ms. Clonts, you're here. You're representing  
17 yourself; is that correct?

18                  MS. CLONTS: Yes.

19                  THE COURT: Okay. And it's C-L-O-N-T-S.

20                  MS. CLONTS: Yes, that's correct.

21                  THE COURT: Okay. So I have reviewed your motion  
22 for payment as well as the motion and amended motion for  
23 relief from the automatic stay.

24                  MS. CLONTS: Your Honor, if -- uh-huh.

25                  THE COURT: So I just want to let you know that I

1 have reviewed those as well as the Debtors' objections to  
2 them.

3 MS. CLONTS: Uh-huh.

4 THE COURT: But if you want to say anything more  
5 in support of those motions, you could do that now.

6 MS. CLONTS: Okay. Before I was making a claim  
7 for an exception. It wasn't just claim payments. That's  
8 why I was motioning for the lift of stay or I'm not sure  
9 because, you know, clearly I'm not an attorney.

10 But I'm not sure if it's called the lift of stay  
11 or relief.

12 THE COURT: Either term is fine. Relief from the  
13 stay or lift of the stay.

14 MS. CLONTS: My term is fine?

15 THE COURT: Yeah.

16 MS. CLONTS: Okay. Yeah. So that's what I was --  
17 that's what I came to argue was the crime fraud exception  
18 and if that's okay, I will -- I will continue with that.

19 THE COURT: Well, again, I've read -- I've read  
20 your pleading. So it's okay for you to continue with, you  
21 know, to make an oral argument, too, or you can just rest on  
22 the pleading; either one.

23 MS. CLONTS: Okay. And to be clear, I didn't -- I  
24 have no idea that the UCC was working on this when I started  
25 this, just to be clear. I wanted to state that.

1                   It started with me seeing someone file a motion  
2                   for a claim payment and I just thought, that's easy. So I  
3                   filed one. And then I was issued a hearing and while I was  
4                   researching for that hearing, I stumbled across the crime  
5                   fraud exception and I thought, well, that sounds easy.  
6                   Perdue just pled guilty to fraud.

7                   So I went ahead and filed the crime fraud  
8                   exception. It seemed like an open and closed case.

9                   So I motioned for the lift of automatic stay  
10                   because, as I understood it, that's what you had to do to  
11                   invoke the crime fraud exception. It seemed justified.

12                   And with Perdue's strategic and well planned  
13                   bankruptcy, it just seemed that Perdue and the Sacklers were  
14                   trying to save billions of dollars in litigation and they  
15                   could afford excellent attorneys and I just -- I just  
16                   thought that that didn't seem fair and it seems, to me, that  
17                   the attorneys are the only ones making any money in this.  
18                   The victims are -- are not getting paid and, when they do  
19                   get paid, it seems that it'll just be pennies on the  
20                   dollars.

21                   So the Sacklers breached their fiduciary duty by  
22                   transferring huge amounts of money anticipating litigation.  
23                   They transferred it out of Perdue to overseas trusts in an  
24                   attempt to hide assets from creditors.

25                   So that was their -- qualified for their fraud,

1 crime fraud exception.

2 Perdue also pled guilty to fraud all the way back  
3 to 2007 and now 2020. Their aggressive marketing tactics,  
4 the -- the thing that you were just talking about, the  
5 derivative fiduciary duty, that qualifies for that.

6 The directors also failed and breached their  
7 fiduciary duty when they knew the company employees were  
8 breaking the law and they permitted it.

9 My damages, most importantly, are the -- is the  
10 loss of my daughter and up and down the docket is all, you  
11 know, many, many documents and many, many exhibits. You  
12 know more than I do because you've probably seen the  
13 unredacted ones.

14 And they have been before Congress, taken  
15 responsibility, full accountability for everyone to see.  
16 And I just believe that when the law for this is applied to  
17 this case that it brings it to the level of meeting the  
18 burden for crime fraud exception.

19 Thank you, Your Honor.

20 THE COURT: Okay. Thank you. And, again,  
21 Mr. McClammy, I've read the pleadings on this. So you  
22 should assume that but I'm happy to hear brief oral argument  
23 if you want to do that or you can rest on the pleadings.

24 I think you may still be on mute, Mr. McClammy.

25 MR. MCCLAMMY: I'm sorry about that, Your Honor.

1 Thank you.

2 I think unless there are specific questions that  
3 Your Honor has for the Debtors, we will rest on our  
4 pleadings and simply reiterate, as this Court is aware, you  
5 know, the import of the stay to these cases and moving them  
6 forward and the fact that the Debtors and the other  
7 constituents in this case, you know, remain very much  
8 focused on bringing these cases to a conclusion for the  
9 benefit of all the -- all of Perdue's creditors and the  
10 public in general.

11 But, again, if Your Honor has specific questions,  
12 happy to answer those.

13 THE COURT: Okay. That's fine. Thank you.

14 All right. I have two motions before me by  
15 Ms. Clonts, each of which is opposed by the Debtors in these  
16 Chapter 11 cases.

17 The first motion is a motion for payment of  
18 Ms. Clonts' claims in these Chapter 11 cases.

19 There were four claims filed by her and they're  
20 each entitled, if allowed, ultimately to payment from the  
21 Debtors' estates. The claims are unsecured and they're pre-  
22 petition claims; i.e., claims for harm that occurred to Ms.  
23 Clonts based on the death of her daughter before the start  
24 of these bankruptcy cases.

25 Ms. Clonts is not the only person who has filed

1 such claims in these cases. In fact, there are tens of  
2 thousands of such claims filed against the Debtors  
3 unfortunately for the claimants as well as claims by almost  
4 all of the states in the United States, thousands of other  
5 governmental entities and Indian Tribes, insurers,  
6 hospitals, and other non-individual entities.

7 The amount of claims filed in this case, the  
8 dollar amount is staggering and the Debtors, with the  
9 official unsecured creditors committee, which is the  
10 fiduciary for all unsecured creditors, and the ad hoc  
11 committees in these cases, representing the states and other  
12 governmental entities, as well as specific types of  
13 claimants, such as the ad hoc committee of NES babies, and  
14 insurers, have been addressing, since the start of these  
15 cases, how to distribute to all of the claimants the maximum  
16 amount of value that can be distributed.

17 The first motion, as I said, seeks payment now of  
18 Ms. Clonts' claim. She acknowledges that she saw a similar  
19 motion made earlier in these cases by a claimant, like  
20 herself, who tragically lost a child and believed that  
21 making such a motion and the grant of such a motion would be  
22 relatively simple.

23 However, the grant of such a motion runs contrary  
24 to a fundamental principle of bankruptcy law, which is why I  
25 denied the prior motion; namely, it is highly unusual,

1 unless there's a net benefit to the other creditors, to pay  
2 a pre-petition, unsecured claim before similarly situated  
3 claims are paid.

4 The fundamental principle of the Bankruptcy Code  
5 is to prevent some creditors from getting a leg up over  
6 other creditors in the treatment of their similar claims  
7 but, rather, to have that treatment apply to all claims  
8 under, in the case of the Chapter 11 case, a Chapter 11  
9 plan, that is negotiated as the Debtors have been  
10 negotiating with key fiduciaries for creditors and then  
11 ultimately proposed, on notice to everyone, and confirmed or  
12 not by the Bankruptcy Court.

13 It would unduly prefer Ms. Clonts over the other  
14 claimants to grant her motion now for payment and,  
15 therefore, I will deny the motion.

16 I will similarly deny the motion for relief from  
17 the stay which, to the extent it doesn't seek immediate  
18 payment, would seek the ability to litigate the unsecured  
19 claim that Ms. Clonts has filed in a non-bankruptcy forum  
20 and I believe then, at least reading between the lines of  
21 the motion, have it be paid.

22 Again, it is rare to have relief from the  
23 automatic stay under 362(a) of the Bankruptcy Code to pursue  
24 litigation of a pre-petition claim even without having it be  
25 paid, just to have it be litigated unless unique

1       circumstances apply such as the litigation is fully insured,  
2       or the litigation is very far advanced and it would be more  
3       efficient to have the claim be litigated in the forum that  
4       has been presiding over the matter or the like.

5               The factors applied by the Second Circuit in the  
6       In Re Sonnax Industries case, none of those factors applies  
7       here.

8               Ms. Clonts has stated, and I appreciate she's not  
9       a lawyer, that she believed that a so-called crime fraud  
10      exception would provide for relief from the automatic stay  
11      here and noted that the Debtors, Perdue, have already pled  
12      guilty to certain crimes in the District Court of the  
13      District of New Jersey during the course of these cases.

14               However, there was no such general exception or  
15      exclusion from the automatic stay provided for in the  
16      Bankruptcy Code. Section 362(b) (4) provides that certain  
17      sections of the automatic stay do not apply to the  
18      commencement or continuation of an action or proceeding by a  
19      governmental unit to enforce such governmental unit's police  
20      and regulatory power including the enforcement of a judgment  
21      other than a money judgment obtained in an action or  
22      proceeding by the governmental unit to enforce such  
23      governmental unit's police or regulatory power.

24               But, by its plain terms, that exception to the  
25      automatic stay applies to governments, to governmental units

1 and would not apply to an individual such as Ms. Clonts.

2 Her motion also references a claim that her claim  
3 would not be subject to any discharge in this case under  
4 Section 523(a)(2) of the Bankruptcy Code.

5 Again, I recognize that Ms. Clonts is not a lawyer  
6 but there are two points to make here. First, actions for a  
7 declaration that the bankruptcy discharge does not apply to  
8 a particular debtor under Section 523(a) of the Bankruptcy  
9 Code are normally brought by an adversary proceeding rather  
10 than a motion like this.

11 But, more importantly, by its plain terms, Section  
12 523(a) of the Bankruptcy Code applies only to discharges of  
13 individual debtors; i.e., people as interpreted by the  
14 Second Circuit as the Second Circuit interprets the term  
15 individual debtor.

16 These Debtors are not people. They're  
17 corporations and other legal entities. For such entities,  
18 Congress has a far more restrictive limitation on a  
19 discharge. It is set forth in Section 1141(d)(6) of the  
20 Bankruptcy Code. It says that notwithstanding paragraph  
21 (1), which is the general discharge provision for  
22 corporations and entities other than people, the  
23 confirmation of a plan does not discharge a debtor that is a  
24 corporation from any kind -- from -- of a kind of a debt  
25 specified in paragraph (2)(a) or (2)(b) of Section 523(a)

1 that is owed to a domestic governmental unit or owed to a  
2 period as the result of an action filed under Subchapter 3A  
3 of Chapter 37 of Title 31 where a similar state statute  
4 which, in essence, is a type of statute that lets a person  
5 step into the shoes of a governmental unit like a  
6 whistleblower statute.

7 Again, Ms. Clonts is not a governmental unit and  
8 doesn't fall into that exception.

9 So, Ms. Clonts, I understand fully that you would  
10 like to have some payment from the Debtors' estate as soon  
11 as possible. That payment, however, cannot come ahead of  
12 payments to (indiscernible). They should be made together  
13 once your and their claims are allowed.

14 The parties have been negotiating a process, a  
15 structure for reviewing claims like yours, and considering  
16 whether they should be allowed in a way that's efficient and  
17 cost effective for people like yourself as well as the  
18 Debtors that tries to minimize lawyer involvement, for  
19 example.

20 Those sorts of procedures have been adopted in  
21 many cases where there are claim like yours and I am  
22 assuming that if and when a plan is confirmed in this case,  
23 such a procedure will be part of it and your claim will be  
24 reviewed and whether it be allowed or disallowed or reduced,  
25 but once that happens, there will be distribution on it as

1 that -- and that that same process will apply to everyone  
2 else who has filed a claim like yours.

3 But that process is a collective one. An enormous  
4 number of people are affected by these cases and it has  
5 taken as long as we have taken in this case to get to a  
6 point near to which such a plan can be filed and confirmed.

7 If the Debtor warrants a discharge, if that plan  
8 is a truly organization plan as opposed to a liquidation  
9 plan, then the Debtor will get a discharge except to the  
10 extent it is asserted it is not entitled to one under the  
11 section I just read from, Section 1141(d)(6).

12 But, again, that applies to governmental units,  
13 i.e., the states and other governmental entities if they  
14 want to pursue that type of relief.

15 But, at this point in the case, while people are  
16 still dealing with the ultimate structure of a plan, and the  
17 resolution of all of the Debtors' estates' claims against  
18 third parties, including claims for alleged avoidable  
19 transfers, which you have referred to, i.e., transfers of  
20 value out of the Debtors for less than fair value or fair  
21 consideration, where the Debtors were insolvent or the like.

22 But, again, that needs to be resolved before there  
23 can be distributions to creditors. And I can tell you that  
24 the tea parties in this case, whether they be the Debtors,  
25 the creditors committee or the ad hoc committees of the

1 states and governmental entities and other ad hoc  
2 committees, I believe have been doing their utmost to  
3 resolved those issues as promptly as they can. And I have  
4 been doing my utmost to make sure that they focus on that  
5 process in a way that takes into account the risks that they  
6 face of not reaching an agreement on the process and the  
7 rewards of either reaching an agreement or not reaching one.

8 I believe that that process is coming to a close.  
9 I set a deadline on it. And I am looking at I hope a  
10 largely, if not entirely, consensual plan before the spring  
11 and confirmation in the spring of this year.

12 We'll see if that can happen. But I cannot move  
13 the process any faster than it is moving at this point.

14 So I will ask Mr. McClammy to submit an order to  
15 chambers denying both of the motions. That order will make  
16 it clear that it is not not denying or disallowing your  
17 underlying claims. You file those claims and they will be  
18 dealt with under a plan.

19 MR. MCCLAMMY: We will take care to submit that  
20 order, Your Honor.

21 MS. CLONTS: Thank you.

22 THE COURT: Okay.

23 MS. CLONTS: Thank you. Thank you, Your Honor.  
24 I'm so sorry that I had -- I got involved in this and I  
25 didn't know what to do. I didn't know --

1 THE COURT: No. There's no reason --

2 MS. CLONTS: -- you know --

3 THE COURT: -- there's no reason to -- ma'am,

4 there's no reason to apologize at all.

5 MS. CLONTS: Okay.

6 THE COURT: This --

7 MS. CLONTS: All right.

8 THE COURT: -- is -- these are complicated issues.

9 MS. CLONTS: Uh-huh.

10 THE COURT: The Bankruptcy Code is something that  
11 lawyers work with their entire career and they still learn  
12 new things that are in it.

13 MS. CLONTS: Yes.

14 THE COURT: So we shouldn't -- you shouldn't  
15 apologize. There's no reason to.

16 But I did want to lay this out carefully so that  
17 perhaps --

18 MS. CLONTS: Uh-huh.

19 THE COURT: -- the transcript can be pointed to if  
20 there are other people, like yourself, who read things in  
21 the press and think, oh, well, maybe I can get paid now or,  
22 you know, why aren't payments being made now.

23 MS. CLONTS: Right.

24 THE COURT: If they reach out to the Debtors or  
25 the creditors committee, the Debtors can send them this

1 section of the transcript, at least to see how I analyzed it  
2 in your situation and if there's a similar, you know, they  
3 could then see it. So --

4 MS. CLONTS: Well, you made it very clear. I  
5 understand completely.

6 THE COURT: Yes. Okay. All right.

7 MS. CLONTS: Thank you so much.

8 THE COURT: And, of course, the -- the claims  
9 you've asserted are serious. I mean, I --

10 MS. CLONTS: Uh-huh.

11 THE COURT: -- am not dealing with the merits of  
12 those claims at all. They're serious claims and it's  
13 because of the seriousness of those claims and tens of  
14 thousands of others, that the parties have been working so  
15 hard in this case and by the parties, I mean, not just the  
16 Debtors --

17 MS. CLONTS: Right.

18 THE COURT: -- but the various committees to try  
19 to get a fair resolution for everybody.

20 MS. CLONTS: Right. I'm just so relieved this is  
21 over. So thank you again.

22 THE COURT: It's not over yet, I'm afraid. I'm  
23 just (indiscernible) --

24 MS. CLONTS: No, I mean -- I mean, for me, this  
25 part of the --

1 THE COURT: Oh, okay.

2 MS. CLONTS: -- this, I'm just glad this is over.

3 Thank you.

4 THE COURT: Okay. Very well. Thank you.

5 MS. CLONTS: Bye-bye.

6 THE COURT: Okay. All right. I think the next  
7 matter on the calendar apropos the section that I was just  
8 talking about is the Debtors' request for a further  
9 extension of the time to object to dischargeability under  
10 Bankruptcy Rule 4007(c) and 1141(d).

11 I think that's the next matter. I don't know who  
12 was handling that from Debtors' side.

13 MR. MCCLAMMY: Yes, Your Honor. This is Jim  
14 McClammy. I believe that will be handled by Christopher  
15 Robertson for us.

16 THE COURT: Okay.

17 MR. ROBERTSON: Good afternoon, Your Honor. For  
18 the record, Christopher Robertson, Davis, Polk and Wardwell  
19 on behalf of the Debtors.

20 Can I be heard clearly in the Court?

21 THE COURT: Yes.

22 MR. ROBERTSON: Oh, thank you, Your Honor.

23 Your Honor, turning to agenda item number four,  
24 very briefly, Ms. Clonts also objects to entry of the fifth  
25 amended order extending time to object to dischargeability

1 of certain debts.

2 I understand this objection remains live  
3 notwithstanding the prior discussion.

4 THE COURT: But this is the only objection, I  
5 gather, too. There's been no other -- no other responses to  
6 the motion?

7 MR. ROBERTSON: That -- that is correct, Your  
8 Honor. I guess let's skip to the end.

9 We initially filed this -- the request to extend  
10 the determination deadline back on December 23rd, 2019.  
11 There have been no objections to the extension that any, you  
12 know, back then or any subsequent time until the present.

13 THE COURT: Okay. And have there been any changes  
14 to the proposed order?

15 MR. ROBERTSON: Just updating dates, Your Honor.

16 THE COURT: Right. But, I mean, no changes from  
17 that -- from those dates, those updated dates.

18 MR. ROBERTSON: No, Your Honor.

19 THE COURT: Okay. All right.

20 And I'm assuming no one has anything further to  
21 say on this motion?

22 All right. I will grant the motion for the same  
23 reasons that I've granted the prior extensions. I believe  
24 that, at this time, in these cases, it would be a sideshow  
25 and an undue burden on the governmental entities and any

1 other entity to have to face the deadline under Rule 4007 to  
2 seek a declaration of non-dischargeability under Section  
3 523(a) to the extent that such a deadline applies and that  
4 it's appropriate to extend that deadline so the parties can  
5 see whether they can negotiate -- include negotiations on a  
6 plan that would deal with dischargeability issues among many  
7 others. Debtors have sought this relief themselves. They  
8 would be the ones benefitting from the imposition of the  
9 deadline. If they're prepared to extend it, and no one else  
10 has objected, other than Ms. Clonts, who I believe now  
11 understands that the motion really doesn't pertain to  
12 directly to her in any event.

13 So I will grant the motion and you can email that  
14 order to chambers.

15 MR. ROBERTSON: Thank you, Your Honor.

16 And, at this time, I would like to turn the podium  
17 back over to my colleague, Benjamin Kaminetzky.

18 THE COURT: Okay.

19 MS. KAMINETZKY: Your Honor, that brings us to --  
20 this is Benjamin Kaminetzky again of Davis Polk. Good  
21 afternoon.

22 That bring us to the final items on the agenda,  
23 which is agenda items five, six, seven and eight.

24 I will be addressing those.

25 I'll turn things over to the media intervenors

1 shortly to address the specific objections that remain to  
2 the sealing and redactions proposed by the Debtors and the  
3 Sackler families.

4 But I thought it would be helpful before we jump  
5 into merits to give the Court a brief overview of what's  
6 been going on and kind of the numerous docket entries and  
7 what's actually still --

8 THE COURT: I think you may have hit -- I think  
9 you may have hit mute briefly, Mr. Kaminetzky.

10 MR. KAMINETZKY: Oh, I'm sorry. I -- what I  
11 propose to do is just to kind of update Your Honor on where  
12 we are and what's still at issue because I think, quite  
13 frankly, it'll make Your Honor happy as well as put  
14 everything in context.

15 So -- and then I'll hand it over to Ms. Townsend's  
16 representing the media parties to present any issues that  
17 remain.

18 So, as you know, back in September, the UCC filed  
19 two motions to compel the production of privileged documents  
20 from the Debtors and the members of the Sackler families.

21 Motions to which the Debtors and the UCC reached a  
22 negotiated resolution back in November.

23 Now, in connection with the UCC's privileges  
24 motions, over 550 documents totaling almost 14,000 pages  
25 were initially filed under seal or in case -- in the case of

1 briefing heavily redacted an immense amount of material by  
2 any measure and it's these materials that were the subject  
3 of the media intervenors motions.

4 As Your Honor may recall, many of those papers  
5 were initially filed under seal because they were, you know,  
6 constituted documents produced and marked confidential  
7 pursuant to the relevant protective orders entered in this  
8 case or referenced such materials,

9 At the time, no party had objected to this sealing  
10 until the media intervenors filed their motion in late  
11 November.

12 It should not be left unsaid that there's no small  
13 amount of irony to the fact that the parties are here today  
14 on the media intervenors' motion to unseal.

15 The vast majority of the materials that are  
16 subject to the motion were filed by the UCC and the  
17 Sacklers, not by the Debtors. And large swaths of it was  
18 the Debtors' business material. Hundreds, or multi hundred  
19 page presentations to the Debtors' board of directors  
20 containing detailed information about the Debtors' business  
21 and product offerings, quarterly reports to the board and  
22 the like.

23 Now why was this material filed? The answer is  
24 simple. The bulk of the exhibits filed by the UCC and the  
25 Sacklers are -- were intended to go to the merits of the

1 parties' underlying liability argument and were filed so  
2 that the parties could "tell their stories" through these  
3 two discovery motions and specifically through various  
4 arguments concerning the so-called crime fraud exception to  
5 the attorney-client privilege.

6 But it was the Debtors who were caught in the  
7 middle of the strategic decisions of the UCC and the  
8 Sacklers to litigate by their stories, by proxy, through  
9 these documents.

10 Now, in light of the fact that the hearing on the  
11 privileges motions was until Monday evening scheduled to  
12 proceed today, it was the Debtors who had to shoulder the  
13 burden of reviewing thousands upon thousands of pages of  
14 documents over the holidays, often page-by-page, and even  
15 line-by-line.

16 The Debtors were and remain quite supportive of  
17 the adjournment of the UCC's privileges motion and so the  
18 Sacklers, so it means that the parties will continue to  
19 dialogue.

20 But that doesn't change the fact, however, that  
21 the Debtors were forced to evaluate reams of information  
22 that we most assuredly, we, the Debtors, wouldn't have filed  
23 and we had to do this in an extremely compressed timetable  
24 demanded by the media parties.

25 With that out of the way, let me be crystal clear

1 about one thing. We agree, we fully agree, with the medial  
2 intervenors that transparency in judicial proceedings is of  
3 paramount importance not only to the parties and to the  
4 Court, but also to the press and the American public.

5 There is intense public interest in these specific  
6 Chapter 11 cases, understandably so. Indeed, the Debtors  
7 recognize that -- that as these cases enter their final  
8 stages hopefully the public's impressed interest in these  
9 proceedings is almost certainly to continue unabated.

10 And, for these reasons, the Debtors have been and  
11 continue to be committed to transparency in these cases, a  
12 commitment that I believe has been exemplified yet again by  
13 the Debtors' response to the media intervenors motions to  
14 unseal.

15 In short, over just a handful of weeks, a good  
16 portion of which fell over Christmas and New Years, the  
17 Debtors worked diligently to voluntarily unseal or authorize  
18 the unsealing of the vast overwhelming majority of the  
19 Debtors' information that was filed in connection with the  
20 UCC privileges motion. Again, mostly by parties other than  
21 the Debtors.

22 And I don't think it would be an unfair or an  
23 exaggeration in the slightest to say that the redactions  
24 that remain are targeted and exceedingly narrow, in many  
25 instances mere words or pages in exceedingly lengthy

1 documents.

2 Now as Ms. Town said -- Townsend informed the  
3 Court last night, the press and the parties have met and  
4 conferred extensively and narrowed their disputes to  
5 essentially two documents with redactions on a total of 42  
6 pages. That's .3 percent, not three percent, .3 percent of  
7 the total pages filed in connection with the UCC's  
8 privileges motion. And there was a remaining issue as well.

9 Before turning the podium over to Ms. Townsend,  
10 let me dispense with the remaining issue, at least as to the  
11 debtors. I don't speak to the Sacklers.

12 As Ms. Townsend informed the Court last night,  
13 certain privilege log excerpts and related documents such as  
14 compilations of individuals appearing on privilege logs that  
15 were exchanged in discovery continued to remain under seal.  
16 The debtors believe that withholding to be entirely  
17 appropriate because, among other things, these materials  
18 contain much information that has little or no relevance to  
19 the case.

20 But, nevertheless, the debtors last night kept --  
21 continued to consider the issue in good faith and can now  
22 inform the Court, and we informed Ms. Townsend earlier  
23 today, that the debtors do not now object to the unsealing  
24 of the privilege log information so long as there is a  
25 reasonable amount of time afforded to the parties to apply

1 redactions to any commercially sensitive information which  
2 might be theoretically in the subject lines or personally  
3 identifiable information, such as email addresses, which is  
4 consistent with the redactions that the debtors have applied  
5 without objection to the other materials.

6 So in light of that, and I believe we could get  
7 that done, Your Honor, in the next two weeks or so. I  
8 believe -- and then we could unseal that as well.

9 So I believe, Your Honor, we're down to literally  
10 two documents. And to be clear, it's not two documents  
11 entirely under seal, but sporadic redactions in only two  
12 documents that are still at issue, at least with respect to  
13 the media and to the debtors. And those are the documents  
14 that Ms. Townsend identified last night, which is Mark Pries  
15 Exhibit 137 as well as Leventhal Exhibit 123.

16 So, Your Honor, all that just to say is that we've  
17 substantially -- I guess that would be an understanding.  
18 We've narrowed the issues to certain redactions on two  
19 certain documents that I think are still at issue.

20 But I now turn the podium over to Ms. Townsend who  
21 we've been working with for the last several months and who  
22 has been, quite frankly, a pleasure to deal with.

23 THE COURT: Okay. But before we do that, I just  
24 want to -- I want to make sure the context for this is clear  
25 in one respect.

1                   There was extensive discovery in these cases  
2                   starting early in the cases between the creditors' committee  
3                   and the ad hoc committee of non-consenting states on the one  
4                   hand, and the debtors and the Sacklers on the other side,  
5                   not really on the other hand, the debtors and the Sacklers.

6                   As part of that discovery, as is quite common,  
7                   customary, the parties, both the targets of the discovery  
8                   and the parties seeking discovery, agreed to protective  
9                   orders to be so ordered by me whereby they contemplated that  
10                  certain information provided in the discovery would remain  
11                  confidential and, in fact, at different levels of  
12                  confidentiality. That's a common practice to enable  
13                  discovery to proceed quickly without fights over what is  
14                  produced in the first instance.

15                  But those orders, as is my practice and the  
16                  practice of the judges in the Southern District, contemplate  
17                  that they are subject to review and motions to unseal such  
18                  information by third parties, including, of course, the  
19                  press.

20                  The debtors have on the calendar today motions to  
21                  seal documents under Section 107(b) of the Bankruptcy Code  
22                  and there are sealing orders in the case. But, again,  
23                  sealing orders under 107 also recognize, because they're  
24                  often sought on short notice, again, to permit pleadings  
25                  to be considered without fights over confidentiality by the

1 Court and other parties that have access to the full  
2 information. But they are subject, again, to the rights of  
3 others, including the press, to have the documents be  
4 unsealed.

5 In all of these instances, the ultimate burden on  
6 disclosure and more appropriately to prevent disclosure is  
7 on the party who wants to prevent disclosure.

8 So I appreciate all of the work that the parties  
9 have done to focus on what is properly now at this stage in  
10 these cases fit for disclosure to the public and it is clear  
11 to me that they've done it with a proper eye to the actual  
12 law, which would require disclosure of almost everything,  
13 and certainly the materials that have been disclosed, which  
14 is almost everything and that we're now discussing a far  
15 more constrained or limited set of items. In fact, we're  
16 now down, as far as the debtors are concerned, to two pieces  
17 of information.

18 This is all, of course, separate and apart from  
19 the privilege motion. And I agree with you, Mr. Kaminetzky,  
20 that the issue of the sealed documents is largely  
21 precipitated by both the committee and the ad hoc committee  
22 of nonconsenting states on the one hand and the Sacklers on  
23 the other to litigate, not in front of me, but in public  
24 eye, not a privilege motion, but to some extent the merits  
25 of their respective positions vis-à-vis each other.

1                   So that's just an inescapable fact as to the state  
2                   in which these cases were in when those documents were filed  
3                   and everyone had to deal with that. There was a period, of  
4                   course, where the parties were educating themselves and  
5                   ultimately the issues here are issues to be decided by a  
6                   court and not by public opinion. But I don't -- I certainly  
7                   do not fault anyone for precipitating the disputes that were  
8                   raised by the media intervenors.

9                   So with that, I'm happy to hear from the  
10                   intervenors' counsel, Ms. Townsend.

11                   MS. TOWNSEND: Thank you, Your Honor. And for the  
12                   record, Katie Townsend of the Reporters' Committee for  
13                   Freedom of the Press on behalf of the media intervenors, Dow  
14                   Jones & Company Inc., Boston Globe Media Partners, LLC and  
15                   Reuters News & Media, Inc.

16                   As Your Honor is aware and as you and Mr.  
17                   Kaminetzky have already indicated, in December and January  
18                   the parties in this matter met and conferred without  
19                   participation from the media intervenors and ultimately  
20                   publicly filed in unsealed redacted form the vast majority  
21                   of the material that was previously sealed in its entirety  
22                   and that was the subject of the media intervenors' motions  
23                   to unseal.

24                   We've since reviewed those publicly filed  
25                   materials and we've met and conferred with the relevant

1 parties who filed timely objections to the motions to  
2 unseal.

3 At this point the media intervenors are in a  
4 position to voluntarily withdraw their pending motions to  
5 unseal without prejudice except as to 17 documents that we  
6 contend are still improperly sealed or redacted. And those  
7 documents, 17 documents, Your Honor, fall within two  
8 categories identified in our reply. And I'll address both  
9 of those categories briefly.

10 I'll start with two -- the two documents that Mr.  
11 Kaminetzky referenced, Exhibit 123 to the October 14th, 2020  
12 Leventhal declaration, and Exhibit 137 to the November 18th,  
13 2020 Preis declaration. Those documents have been redacted  
14 by the debtors purportedly on the ground that they contain  
15 confidential commercial information within the scope of  
16 Section 107(b).

17 Now, Your Honor, Section 107(a), as you know,  
18 makes any paper filed in a bankruptcy matter like this one a  
19 public record open to public inspection unless one of the  
20 express enumerated exceptions to that disclosure mandate  
21 applies. Those enumerated exceptions that are found in  
22 Section 107(b) or -- and 107(c) are narrowly construed. And  
23 as we explain in our briefing, the Second Circuit has  
24 interpreted commercial information in this context to be  
25 information that, if disclosed, would give an unfair

1 advantage to competitors by revealing details about the  
2 entity's commercial operations.

3 With respect to 123, Exhibit -- excuse me, Exhibit  
4 123 to the Leventhal declaration and Exhibit 137 to the  
5 Preis declaration, the debtors assert the redactions are  
6 warranted, and as Your Honor has already indicated they  
7 therefore bear the burden of demonstrating that the  
8 redactions falls within the scope of an exception to Section  
9 107, and that there's a compelling need to preclude public  
10 access.

11 It's the media intervenors' position that they  
12 have not met that burden with respect to these two  
13 documents. Exhibit 123 is a slide presentation dating back  
14 to mid-2016 and we understand that the information redacted  
15 from that presentation consists of internal projections  
16 about exclusivity periods for certain products. It's our  
17 understanding including opioid products.

18 Exhibit 137 is a 2017 memorandum from Purdue's  
19 president and CEO, Mr. Landau expressing his views about the  
20 challenges that have been facing the company. Large swaths  
21 of that memorandum are -- have been redacted and remain  
22 under seal.

23 It's not at all clear and it's our position the  
24 debtors haven't demonstrated that unsealing these documents  
25 in their entirety, particularly given that they are at least

1 four or five years old at this point, would give an unfair  
2 advantage to any competitor of Purdue Pharma. And for that  
3 reason we argue that they should be unsealed.

4 With respect to the remaining 15 documents, and I  
5 understand that the debtor's position with respect to these  
6 has changed and so Mr. Kaminetzky didn't address them.

7 Those are privileged logs --

8 THE COURT: Well, why don't we ask, do the  
9 Sacklers still oppose the unsealing of the privilege logs?

10 MR. JOSEPH: Your Honor, Gregory Joseph for the  
11 Raymond Sackler family. Yes, that is the one thing that we  
12 do oppose.

13 THE COURT: Okay. All right. I'm sorry to  
14 interrupt you, Ms. Townsend, but I wanted to make sure that  
15 you were arguing -- that you needed to argue on this point.  
16 But you do, so go ahead.

17 MS. TOWNSEND: Thank you, Your Honor.

18 With respect to those documents, so those are the  
19 privileged log materials, and they include excerpts of  
20 privilege logs that were filed as exhibits in connection  
21 with the UCC's privileges motion and those are currently  
22 sealed -- that are currently sealed in their entirety.

23 So setting aside the debtor is the only party to  
24 timely file an objection to the unsealing of the privilege  
25 log materials and the only party to offer I would say any

1 form of a substantive argument for doing so is the Raymond  
2 Sackler family party, and so I'll briefly respond. We've  
3 done so a bit in our reply, but I'll briefly respond to what  
4 I understand their arguments in favor of continued sealing  
5 of those materials, what I understand those arguments to be.

6 First, in the written objections, the Raymond  
7 Sackler family relies upon this argument that these  
8 materials are not evidence and, therefore, they can be  
9 sealed in their entirety. It appears to me that their  
10 position is that the materials here are not judicial records  
11 to which the common law presumption of public access applies  
12 or that the common law presumption is weaker here.

13 Now to be clear, we disagree that these are  
14 nonjudicial records. We've argued for their disclosure  
15 under the First Amendment as well as Section 107 and as  
16 we've pointed out --

17 THE COURT: Well --

18 MS. TOWNSEND: -- in our reply brief --

19 THE COURT: -- can I interrupt you on this point?  
20 I want to make sure I have -- I want to -- I'm sorry to  
21 interrupt you. I want to make sure I have the facts  
22 straight on this. These are not just privilege logs that  
23 were provided in discovery. They were actually filed on the  
24 docket as exhibits to various declarations in the privilege  
25 litigation, correct?

1 MS. TOWNSEND: That is correct, Your Honor. We do  
2 not seek --

3 THE COURT: Okay.

4 MS. TOWNSEND: Our motions do not seek any unfiled  
5 discovery material merely exchanged between the parties,  
6 only material that was filed.

7 THE COURT: Okay. Okay. So you can go ahead. I  
8 just wanted to make sure that was clear on the record.

9 MS. TOWNSEND: Thank you, Your Honor.

10 I think that my next point will sort of dovetail  
11 with precisely that. We do -- it is our position, and as we  
12 stated in our reply, that the interpretation of the Second  
13 Circuit's decision in Brown v Maxwell is not right, but I  
14 think that's a little bit besides the point because we have  
15 not moved to unseal these materials under the common law  
16 presumption of access because in bankruptcy proceedings the  
17 common law presumption has been displaced by Section 107.

18 And so the question here is not, you know, whether  
19 or not these are judicial records to which the common law  
20 presumption applies and whether that right has been  
21 overcome, but rather whether Section 107 applies and, if it  
22 does, which it clearly does because Section 107(a) doesn't  
23 just apply to any paper. And this is by plain language.  
24 It's expressed in plain language. It applies to any paper  
25 filed in a case under -- in -- under -- in bankruptcy.

1 So Section 107(a) plainly applies to these  
2 materials because they were filed in connection -- they were  
3 filed with the Court in this matter. The question then  
4 becomes does an exception apply.

5 Now with respect to the privileged materials as a  
6 whole, the Raymond Sackler family has not asserted that any  
7 specific exception would, under 107(b) or (c) applies to  
8 make those documents not properly unseal -- not -- doesn't  
9 require them to be unsealed. And quite frankly, Your Honor,  
10 I can't think of what possible argument that would be --

11 | THE COURT: Well --

12 MS. TOWNSEND: -- if they are --

13 THE COURT: -- the only one I can really think of  
14 here is the one identified by Mr. Kaminetzky, which is  
15 personally identifying information might be in the privilege  
16 log for some reason.

17 And you don't have any problem with that being  
18 redacted, do you?

19 MS. TOWNSEND: No. And to be clear, I was  
20 referring to the documents as a whole. I think to the  
21 extent that there is -- that there are -- there is properly  
22 with -- that there can be properly redacted, you know, non-  
23 public personal identifying information, you know, we  
24 wouldn't challenge the redaction of material that actually  
25 does fall within an exception.

1 I think I would flag for Your Honor that it's my  
2 understanding that the Sackler family parties are -- have --  
3 are taking the position, and I'll be frank. We didn't  
4 realize this until meet and confer discussions with their  
5 counsel that some of the material would also necessarily  
6 from their perspective need to be redacted because it  
7 includes counterparty information, so business and  
8 investment counterparty information.

9 And the basis that they've asserted for that,  
10 which they sort of dealt with as a separate category in  
11 their objections to our motions to unseal, is the Court's  
12 May 1st, 2020 ruling which brought that material within the  
13 scope of sort of a heightened level of protection under the  
14 protective order governing discovery.

15 And I think our position there would -- is sort of  
16 two-fold: One, the fact that there is a -- you know, the  
17 propriety of the scope of a protective order governing  
18 discovery, which is entered on a different standard, a good  
19 cause standard, is not really what's at issue here. What's  
20 at issue here is whether this material that was filed with  
21 the Court is accepted from disclosure under Section 107.

22 So I would respectfully to the Sackler family's  
23 counsel say that the existence of the protective order or  
24 the fact that this material is subject to a protective order  
25 that governs discovery is not relevant at this stage. In

1 fact, most of the material as you've indicated that has been  
2 unsealed to date was subject to a protective order governing  
3 its provision in discovery. And, again, those -- as Your  
4 Honor's already indicated, protective orders certainly serve  
5 different purposes in litigation than a sealing order does.

6 And you would -- we would contend that that  
7 material also does not fall within one of the express  
8 exceptions under Section 107. It's not confidential  
9 commercial information. It's not trade secret information.  
10 It's not research and development information, the specific  
11 categories that have been identified -- that are identified  
12 or expressly enumerated in Section 107(b).

13 And so for that reason, too, we would argue that  
14 the privilege log materials should be disclosed. To the  
15 extent that there are redactions, that that material that is  
16 properly within the subject of an exception to 107, that  
17 would be non-public TII, for example, that material could be  
18 redacted, but those redactions have not been made. The  
19 material has just been sealed in its entirety.

20 And I think, Your Honor, that really covers the  
21 waterfront with respect to the material that's -- the 17  
22 documents that we -- that are still at issue. I would be  
23 happy to answer additional questions Your Honor has with  
24 respect to those materials.

25 THE COURT: Well, I have a question for the

1 parties.

2 We have been looking for a complete version, both  
3 redacted and unredacted, of Exhibit 123 to the Leventhal  
4 declaration and Exhibit 137 to the Preis declaration and  
5 don't have them. I would like someone to email those to  
6 chambers immediately so I can look at them, both the  
7 redacted and unredacted versions.

8 MR. HURLEY: Your Honor, this is Mitch Hurley with  
9 Akin Gump on behalf of the official committee. We can  
10 certainly take care of sending the Preis exhibit you  
11 referenced. And whatever version of the Leventhal exhibit  
12 we have we will send as well.

13 THE COURT: Okay. And, again, I need both the  
14 complete and the redacted ones.

15 MR. KAMINETZKY: Well, Your Honor, we could --  
16 this is Ben Kaminetzky. I'll have someone do that from my  
17 office right away --

18 THE COURT: Okay.

19 MR. KAMINETZKY: -- both of them --

20 THE COURT: Thank you.

21 MR. KAMINETZKY: -- together.

22 THE COURT: Okay.

23 MR. KAMINETZKY: Your Honor, would you like to --

24 THE COURT: All right.

25 MR. KAMINETZKY: This is -- I'm sorry. Would you

1 like to deal with the privilege log issue with --

2 THE COURT: Yeah.

3 MR. KAMINETZKY: -- the Sacklers or --

4 THE COURT: We should deal with -- why don't we  
5 deal with the privilege logs while I'm waiting to get those  
6 other two exhibits.

7 MR. KAMINETZKY: Okay. So I will --

8 THE COURT: So I take that -- I think that means  
9 Mr. Joseph?

10 MR. JOSEPH: Yes, Your Honor. May it please the  
11 Court, thank you.

12 Your Honor, the only issue concerning the  
13 privilege logs that I would like to raise is, first, it's  
14 only relevant to the general challenges motion which has  
15 been adjourned at the request of the UCC to see whether it  
16 can be resolved. As -- and I'll come in a moment to the  
17 fact that it has been overwhelmingly resolved so far.

18 But this motion, the general challenges motion,  
19 hasn't been heard, may never be heard. And if it is heard,  
20 we're talking about a series of entries that are not  
21 evidence, that are not evidential, that are tools that are  
22 used for the Court to help identify what the nature of the  
23 claim is and how to resolve the evidence issue. Ninety  
24 percent of the entries being sought are irrelevant to any  
25 decision the Court would ever render on the general

1 challenges motion. That's because during the briefing  
2 process, the parties have streamlined the dispute so that  
3 almost 90 percent of the entries that the media is seeking  
4 will never be relevant, will never be used by the Court to  
5 decide the motion.

6 Hurley Exhibit B, which was the privilege log  
7 entry exhibit filed with the opening briefs contains over  
8 12,500 entries. Preis Exhibit B, which was filed on reply,  
9 cut that number to 1,661 entries. So that eliminated  
10 approximately 90 percent of the initial privilege log  
11 entries from potentially even being relevant to Your Honor's  
12 decision and we've cut that number down. By making another  
13 production it's still a number in excess of 1,500, and this  
14 process is continuing. That was the reason why the UCC  
15 sought to defer the motion for which these are relevant.

16 And we suggest, Your Honor, that 107 under the  
17 Second Circuit's opinion in Orion codifies the common law  
18 right of access and it specifically says the right is not  
19 absolute. The Court has to grant the motion to protect if  
20 it's under 107(b) in there particular categories, but it has  
21 discretion. And the Supreme Court says that when a statute  
22 covers an issue that's previously governed by the common  
23 law, the statutes interpreted consistently with the common  
24 law with the presumption that congress intended to read --  
25 retain the substance of the common law.

1                   So if we look at what the law is in this area, the  
2 leading decision is the decision by the Second Circuit in  
3 Brown. And the Court said that the weight to be given a  
4 presumption of access for discovery materials depends on the  
5 role the material plays in the exercise of judicial power  
6 and the resulting value of the information to people, the  
7 media and the public monitoring the federal courts.

8                   And the reason it says that is it distinguishes  
9 summary judgment materials. It says those are automatically  
10 reviewable. That's going to lead to an adjudication on the  
11 merits. That's an act of government that has to be  
12 reviewable. But a discovery issue is not an adjudication on  
13 the merits.

14                  And here we know that if this motion is decided,  
15 it's not going to be used -- Your Honor will not be using at  
16 least 90 percent of the materials which the media is  
17 seeking. Brown says that you look at the role the material  
18 plays in the exercise of judicial power. Well, we know even  
19 for the ten percent that remains it's not comparable to  
20 summary judgment evidence. It's not any evidence. It's not  
21 something you would decide in adjudicating a substantive  
22 motion.

23                  Public access isn't going to facilitate any  
24 meaningful public monitoring of the Court's function and its  
25 exercise of its function. All the relevant entries are

1 quoted in the briefs. And there is prejudice in unsealing  
2 these materials. They do contain the names of investment  
3 counterparties which Your Honor ruled on May 1 would cause  
4 harm to the estate because it would cause harm to the  
5 Sacklers in connection with their ability to fund any  
6 settlement. They contain personally identifying  
7 information. All of that would need to be redacted.

8 But there's another prejudice here, too. It's no  
9 secret that our clients have been vilified in the media.  
10 They're harassed and threatened on social media. So  
11 publishing thousands of irrelevant entries listing  
12 communications with others over a 25-year period will permit  
13 those others to be harassed and threatened, and there is no  
14 legitimate need for public access to non-evidence.

15 It's also -- if you think, Your Honor, about this  
16 for a moment. Suppose they had made this motion initially  
17 when the Hurley Exhibit B was the standard. Then there  
18 would have been 12,500 entries that were potentially  
19 relevant. Now there are about 1,500. The parties are  
20 speaking to see whether they can resolve this general  
21 challenges motion altogether and render them entirely  
22 irrelevant. If that happens, then this whole issue as to  
23 which these non-evidential privilege log entries were filed  
24 would be moot.

25 I would suggest, Your Honor, that at a minimum

1 this motion is premature because if the parties succeed in  
2 resolving the general challenges motion, then none of these  
3 materials are ever going to be relevant to a judicial  
4 decision. The issue is going to be moot. Under the common  
5 law, Judge Preska (ph) and Magistrate Judge Ellis have ruled  
6 documents submitted on a motion that is moot are not  
7 judicial documents under the common law.

8 So we would ask the Court if it's not inclined to  
9 deny this motion, to adjourn it to the date which is set for  
10 the general challenges motion if that's not resolved. And  
11 we would also know at that point which, if any, entries  
12 might actually be considered by the Court and be relevant to  
13 the Court in rendering a decision.

14 Thank you, Your Honor.

15 THE COURT: The issue as to the counterparties,  
16 are those current counterparties or past counterparties?

17 MR. JOSEPH: We are concerned about current  
18 counterparties. That is what Your Honor permitted us to  
19 redact. But we'll have to --

20 THE COURT: Would --

21 MR. JOSEPH: -- go through, you know, thousands --

22 THE COURT: -- that be -- but as far as the  
23 privilege logs are concerned, is that -- I mean, are there  
24 current counterparties on the privilege logs who are engaged  
25 in business not as advisors, but in business with your

1 clients?

2 MR. JOSEPH: Your Honor, because there were 20,000  
3 entries on those logs, I can't answer that. I can tell you  
4 we -- on the initial set of logs. We will have to go  
5 through and identify. But we have provided who's who of  
6 people on logs which include counter -- investment  
7 counterparties. But we would have to see whether they're  
8 within either the 12,500 or the 1,661 or whatever the  
9 ultimate number of relevant entries is, depending on Your  
10 Honor's decision.

11 THE COURT: But that hasn't been done yet I  
12 gather?

13 MR. JOSEPH: We did -- correct. We did not make  
14 that review because we don't have Your Honor's permission to  
15 do it. This is now an application to unseal and we would  
16 have to get permission to be able to continue to do that  
17 just like the personally identifying information, which was  
18 also ordered on May 1.

19 THE COURT: All right. Have you given me the  
20 cases on mootness?

21 MR. JOSEPH: No, Your Honor, we have not.

22 THE COURT: Okay. So what are those cites?

23 MR. JOSEPH: Yes. International Equity Investment  
24 Inc. versus Opportunity Equity Partners, 2010 Westlaw  
25 779314. That's Magistrate Judge Elli's opinion holding that

1 the motion became moot when the parties entered a  
2 stipulation that resolved the issue raised by the motion.  
3 Thus the Court didn't use the documents to make a  
4 substantive determination because of the targeted doc --  
5 because targeted documents don't fall within the category of  
6 judicial documents. There's no presumptive right of access.

7 The second case is Giuffre, G-I-U-F-F-R-E, versus  
8 Maxwell, 2020 Westlaw 133570, and that's Judge Preska's  
9 decision from January 30th of 2020 in which she holds that  
10 all disputes regarding the underlying merits of the action  
11 have been rendered moot by the settlement. There's, thus,  
12 no live controversy to which a judicial power can extend.  
13 There was never and now never can be a judicial decision-  
14 making process that would trigger the public's right to  
15 access the undecided motions and the documents relevant to  
16 them.

17 And the Court, Judge Preska, does say in a  
18 footnote that the Court will have to consider the issue of a  
19 motion that's been submitted and hasn't been decided. But  
20 this is a discovery motion. This is not a summary judgment  
21 motion which as a matter of law means that every document  
22 filed is entitled public access. Lougash (ph) says that and  
23 Brown says that. This is a discovery motion and we're  
24 dealing with devices or tools, not evidence.

25 Thank you.

1 THE COURT: Okay.

2 MS. TOWNSEND: Your Honor, this is Katie Townsend  
3 for the media intervenors. May I respond briefly to the  
4 argument that has been made by Mr. Joseph?

5 THE COURT: Sure.

6 MS. TOWNSEND: Thank you. And I would be happy,  
7 Your Honor, as well, to the extent that Your Honor wants to  
8 take this under submission, we could certainly provide  
9 additional briefing to the Court on these issues. I note  
10 that the two cases that have been cited by Mr. Joseph,  
11 neither of those are bankruptcy cases. And I -- we would  
12 agree as the Second Circuit concluded in Orion that Section  
13 107(a)'s disclosure requirement is not absolute; that it is  
14 qualified, but it is qualified expressly, solely by the  
15 exceptions that are set forth in Section 107. And, again,  
16 Section 107(a)'s language that indicates that it applies to  
17 any paper filed I think would be controlling in this case.

18 I would also note that the Giuffre Maxwell case,  
19 Judge Preska's decision, cited -- that was cited by Mr.  
20 Joseph is, in fact, is the same case on remand in the Brown  
21 v Maxwell case that was cited by the Sackler family parties  
22 in their briefing and again indicates to the contrary that  
23 material that is cited, that is filed in connection with a  
24 discovery motion, it's not as though the common law  
25 presumption does not apply to those materials. I think the

1 Second Circuit in *Brown v Maxwell* make clear that even if  
2 the presumption is weaker, it certainly still applies. And,  
3 again, I would note that we think that the presumption has  
4 been displaced in this context by Section 107 of the  
5 Bankruptcy Code.

6 I would also just want -- like to take issue, I  
7 think, with the notion that there's a sort of temporal, you  
8 know, sort of a time period when material could be  
9 accessible to the public and that that can change depending  
10 on actions taken by the parties. So taken to its logical  
11 conclusion, I think the arguments that Mr. Joseph is making  
12 is that if a party were to file a motion for summary  
13 judgment under seal, that the public would have a right of  
14 access to that if it moved to unseal.

15 But if the parties then reached a settlement  
16 agreement and withdrew those motions for summary judgments,  
17 that the right of access would sort of evaporate into thin  
18 air. And I think that that's just contrary to existing law  
19 that makes very clear that the right of access both under  
20 the common law and the First Amendment where it applies is a  
21 contemporaneous right of access. The Supreme Court in  
22 *Nebraska Press against Stewart*, the cite for that is 423 US  
23 13 -- 1327. It's a 1975 decision that makes clear that sort  
24 of each day that access is delayed or denied to the public  
25 constitutes a separate and cognizable infringement on the

1       First Amendment right of access.

2                   And other lower courts agree, the Fourth Circuit  
3       in Doe against Public Citizens, the cite for that is 749  
4       F.3rd 246. That's a 2014 decision from the Fourth Circuit  
5       make clear that when the public and press have a right of  
6       access to court documents, that right is contemporaneous.

7       In other words, the right of access attaches.

8                   And Section 107(a), again, I think it displaces  
9       the common law right, but it certainly applies on its face  
10      to any paper filed. It applies as soon as that material is  
11      filed with the Court. There's no sort of temporal  
12      requirement that the Court rule on a motion or dispose of a  
13      motion, and that includes a motion for summary judgment. It  
14      includes any kind of motion filed with the Court in order  
15      for the public's right of -- to have a right of access to  
16      that material.

17                  So I think fundamentally that argument is simply  
18       mis-- the way that the public's right of access operates.  
19       It is intended to allow members of the press and public to  
20       observe the progress of proceedings. And that certainly can  
21       mean that motions for summary judgment are filed. The  
22       public sees those motions for summary judgments, and then a  
23       settlement is reached. It can mean that a motion to compel  
24       is filed and that the party ultimately withdraws that or  
25       narrows the scope of issues -- of the issues to be presented

1 by that motion to compel. That happens routinely. It  
2 doesn't alter the public's right of access to that material.

3 And I think finally, Your Honor, I would note that  
4 again with respect to the business and investment  
5 counterparty information, there simply is no exception under  
6 Section 107 that would apply to that type information. If  
7 you look at the May 1st, 2020 hearing that Mr. Joseph  
8 referenced, he argued at that hearing that the basis for --  
9 and, again, we weren't talking about, we weren't talking  
10 about sealing material filed with the Court at that point.  
11 We were talking about how material exchanged between the  
12 parties, the discovery process would be handled by those  
13 parties.

14 He contended that to -- that for certain  
15 counterparties to be publicly associated with the Sackler  
16 family would cause them to, you know, pull away or terminate  
17 relationships or potentially end relationships with the  
18 family because of that association. That is not a trade  
19 secret information. That is not research and development  
20 information. That is not confidential commercial  
21 information that its disclose would harm an entity's  
22 business by giving an unfair advantage to its competitors.  
23 It's just simply not the type of information that the  
24 exceptions to 107 were intended or the purpose of Section  
25 107 -- the exceptions to 107 were intended to protect.

1                   And so I think I would just finally say, Your  
2 Honor, that with respect to PII, and I think the parties  
3 would -- and the redaction of PII and the privilege log  
4 materials, you know, I think the parties would agree with me  
5 that the media intervenors have not objected to that in a  
6 number of the vast majority of the documents that have been  
7 filed. Therefore, to the extent the Court would like to  
8 proceed to the debtor's request for a reasonable period of  
9 time for the parties to review those materials to redact  
10 PII's, which is non-public email addresses, things of that  
11 nature, the media intervenors would not object to that as a  
12 way of moving forward with respect to these materials.

13                   And with that, Your Honor, again, we're happy if  
14 you would prefer -- if you would like or need additional  
15 briefing on any of the legal issues, we're happy to provide  
16 that.

17                   THE COURT: Okay. Let me go back to Mr. Joseph.

18                   I obviously reviewed the Orion Pictures case  
19 before this hearing. I've looked at it again. I don't see  
20 a recognition by the Circuit in that case that there are any  
21 exceptions in 107(a) other than those in 107(b). Am I  
22 missing something?

23                   MR. JOSEPH: Well, Your Honor, on page 27 -- I'm  
24 just going to read two sentences if I may.

25                   THE COURT: Right.

1 MR. JOSEPH: Although the right of public access  
2 to court records is firmly entrenched and well supported by  
3 policy and practical considerations, a right is not  
4 absolute. There's a cite to *Colliers*. And then it says, in  
5 limited circumstances the Court must deny access to judicial  
6 documents generally where open inspection may be used as a  
7 vehicle for improper purposes. Generally, not exclusively.  
8 That's not limited to the exceptions in 107(b).

9                   Here, the entire purpose on May 1 of not  
10                  permitting investment counterparty information to go even to  
11                  the parties in this case was to avoid a leak to the press.  
12                  That doesn't change because the press now comes to seek it  
13                  directly. Counsel --

14 | THE COURT: But --

15 MR. JOSEPH: -- Ms. Townsend --

16 THE COURT: But on the other hand --

17 MR. JOSEPH: I'm sorry, Your Honor.

THE COURT: But congress in 1973(a)

19 provided in Subsections (b) and (c) a paper filed in a case  
20 under this title in the dockets of a Bankruptcy Court are  
21 public records and open to examination.

22 MR. JOSEPH: Your Honor, I think that there is a  
23 fair argument that a privilege log that is sent as a tool to  
24 permit the Court to identify documents isn't a paper that's  
25 contemplated by that. But I'm not going to say that. I can

1 rely on Orion which gives the Court discretion. There is no

2 --

3 THE COURT: Well --

4 MR. JOSEPH: -- proper purpose in getting --

5 THE COURT: -- the Court only considered 107(b).

6 It didn't consider any other basis for sealing the  
7 documents.

8 MR. JOSEPH: That's true. But that is two  
9 paragraphs down when it actually goes to the statutory  
10 exception. That's subsequent to its recognition of a  
11 discretionary exception. And that --

12 THE COURT: Well --

13 MR. JOSEPH: -- is where the inspection may be  
14 used as a vehicle for improper --

15 THE COURT: -- do you have any case that provides  
16 a discretionary exception that's not within the ambit of  
17 107(b) in a bankruptcy case?

18 MR. JOSEPH: Other than Orion I do not, Your  
19 Honor.

20 THE COURT: Okay. And I read that language in  
21 Orion as just sort of an introductory discussion of the  
22 topic of sealing and not a construction of 107(a). I mean,  
23 it -- I don't see how a judge-made rule, which is what I  
24 think we're talking about in the Brown case and other cases,  
25 can override a statute.

1 MR. JOSEPH: Your Honor, the Orion case cites the  
2 Nixon decision citing a Rhode Island case saying in this  
3 hypo -- in this example, a court can ensure its records are  
4 not used to promote public scandal. I mean, it does --

5 THE COURT: Well, but that -- if that's --

6 MR. JOSEPH: -- use its discretion in --

7 THE COURT: I mean, that's a separate provision in  
8 107(b). It protects a person with respect to scandals or  
9 defamatory matter.

10 MR. JOSEPH: I do understand that, Your Honor. I  
11 do understand that. But --

12 THE COURT: I mean, I -- look, I see the language  
13 you're referring to. Court's do sometimes like to explain  
14 why there are exceptions to something that's a very  
15 important public policy, i.e. the First Amendment or common  
16 law right to access. And the heading of that section is  
17 common law right to access, but it's -- I guess I view that  
18 as just an introduction to what the Court actually had to  
19 decide which is what exception is there to 107(a). And it  
20 only applied 107(b). It didn't look at anything else.

21 MR. JOSEPH: In that case, Your Honor, I cannot  
22 disagree. But I think it's relevant that the discussion of  
23 107(b) comes up in connection with the common law right of  
24 access because the Supreme Court tells us that when a  
25 statute covers an issue that was governed by the common law,

1 it should be interpreted consistently. There have to be  
2 some limits, which is why the Court talks about improper  
3 purposes.

4 And common law --

5 THE COURT: Well, I guess -- although, I mean, the  
6 statute I think arguably isn't a major change from common  
7 law because (b) largely covers common law provisions.

8 MR. JOSEPH: But common law does go --

9 THE COURT: The common law concept. In one way it  
10 makes it broader with the absolute protection for trade  
11 secrets or confidential research development or commercial  
12 information. And then it has the protection against  
13 scandalous and defamatory matter.

14 What it doesn't include, what -- and what is  
15 included in Rule 12(f) is irrelevant matter. But I think  
16 that's a -- you know, that -- that's a motion to strike  
17 something in a pleading, not a --

18 MR. JOSEPH: Well --

19 THE COURT: -- an access to pleadings in the first  
20 place.

21 MR. JOSEPH: -- the Court has -- I mean, the Court  
22 has access -- the Second Circuit has applied 12(f) beyond --  
23 in this -- beyond just filings of pleadings in the case.

24 But, Your Honor, on that reading, which is Ms.  
25 Townsend's reading that 107 applies to any paper filed, then

1 in a case like this it could be used as a vehicle to put in  
2 anything for ulterior reasons that -- and then ask the press  
3 to come and get it.

4 THE COURT: No, but if there are --

5 MR. JOSEPH: I mean --

6 THE COURT: But, again, if there ulterior reasons,  
7 then (b) (2) would protect the person.

8 MR. JOSEPH: Well, but I'm talking about non-  
9 scandalous and defamatory. I mean, it could be all sorts of  
10 things that disclose information just to harm, which is what  
11 investment counterparty information does.

12 THE COURT: Well --

13 MR. JOSEPH: Disclosing information --

14 THE COURT: -- but we don't -- I guess that's a  
15 separate point that I wanted to raise.

16 One of the key points from the Brown decision,  
17 Giuffre v Brown or Brown v Giuffre, and then Brown v Maxwell  
18 is that the Court needs to engage in a particularized  
19 analysis. I don't know what the level of harm here is. You  
20 know, it's -- it -- that analysis hasn't been done by the  
21 party that's looking to have these remain sealed. I don't  
22 know if there's a threat to safety, for example. You know,  
23 I would think that the most persuasive set of facts for your  
24 argument, that there's got to be something beyond 107(b) to  
25 prevent public access to something filed in a bankruptcy

1 case, or (c) which deals with personally identifiable  
2 information, would go to the safety of a person.

3 And yet I don't know whether there's any -- I  
4 don't know whether any particular one of these has that  
5 issue. It's not been -- in other words, there's a blanket  
6 sealing here. So it would seem to me that pending that  
7 review, the privilege logs should be disclosed with the  
8 exception of what's covered by 107(c) personal identifiers,  
9 and however without prejudice to the making of a motion,  
10 which I would decide on an actual factual record as to  
11 whether there is some level of information that is protected  
12 here either under 107(b)(1) or (2) or under some common law  
13 theory.

14 But I'm just -- we're just hypothesizing right  
15 now. We really don't know what we're talking about.

16 MR. JOSEPH: But, Your Honor, if I may --

17 THE COURT: So it seems to me that the burden on  
18 this point should be -- since you're going to be reviewing  
19 the documents anyway, would be to raise it in that context  
20 as opposed to in a general context.

21 MR. JOSEPH: Your Honor, counsel for the press has  
22 suggested briefing. I've been provided by one of my  
23 colleagues with a Bankruptcy Court case from the District of  
24 Delaware that does contemplate that a Court retains  
25 authority to seal documents when justice so requires.

1 Owings Corner Armstrong 560 --

2 THE COURT: Well, that -- that's fine. But I  
3 guess my issue is I would like to know when justice so  
4 requires beyond just the proposition, which is not on the  
5 record before me at this point.

6 MS. MONAGHAN: Your Honor, this is Maura Monaghan  
7 from Debevoise & Plimpton. I represent the Mortimer Sackler  
8 branch of the Sackler family.

9 THE COURT: Right.

10 MS. MONAGHAN: I just wanted to raise one  
11 complication to perhaps discuss about process for making  
12 that showing.

13 Your Honor raised the concern about safety which  
14 is a real concern and does, we think, require redaction of  
15 certain names. The trouble is if we file something making  
16 that motion on the docket, that itself becomes a filing and  
17 we have concerns about copycats. I don't know if Your Honor  
18 has any suggestion for a procedure to address that concern.  
19 But one of the cleft sticks (sic) we find ourselves in is we  
20 don't necessarily want to publicize the threats against our  
21 clients and, you know, where those threats took place or  
22 what types of threats they were.

23 THE COURT: Well, has this been discussed with the  
24 media parties at all?

25 MS. MONAGHAN: I don't believe it's been up for

1 discussion until now. We could have that conversation --

2 THE COURT: All right.

3 MS. MONAGHAN: -- with Ms. Townsend.

4 THE COURT: Look, I want to step back for a  
5 second.

6 As everyone on this -- every lawyer on this call  
7 knows, I really like the briefing to be in advance because I  
8 rule from the bench and because these matters need to move  
9 ahead and don't warrant delay with a written opinion.

10 Normally I would be quite cross with parties that  
11 haven't cited me any of the applicable case law, in fact,  
12 any of the actual reasons for denial of the motion except  
13 for the reason that was asserted based on the information  
14 being irrelevant, which is actually something that I was  
15 able to research and it was actually well dealt with in the  
16 context of 12(h) -- I'm sorry -- 12(h) -- 12(f) of the  
17 federal rules by another District Court, a later District  
18 Court.

19 So on the other hand, this motion as it was  
20 originally styled and pursued covered an enormously greater  
21 amount and range of documents, and the parties have been  
22 working hard on narrowing those down and saving the Court  
23 from a lot of work on a lot of other issues.

24 I still don't have copies of the other two  
25 documents that I actually need to focus on to see if

1 107(b)(1) applies. So I guess all things considered rather  
2 than simply saying, no, I'm not going to take any more, you  
3 had your chance and that's it. It probably makes sense for  
4 the parties to discuss these two documents as well as give  
5 me those documents and I guess provide me at least with the  
6 case law on this in simultaneous briefs.

7 I have to say that generally speaking it's hard to  
8 see how privilege logs really would lead to anything  
9 material in a newspaper story. But that's not ultimately  
10 the point except to say that it's probably worth adjourning  
11 this so that I can get those briefs and decide it at the  
12 next omnibus hearing with the actual pleadings -- I'm sorry  
13 -- the actual court filings that are sought to be redacted  
14 and a further description of what the concern is in real  
15 terms that the Sacklers have with regard to the privilege  
16 logs.

17 In that context, I would expect the media  
18 representatives to act responsibly about some means to  
19 protect people from public disclosures, to threats on their  
20 life or their safety. That's not something that any  
21 reputable media outlet and certainly the media companies  
22 that are part of Ms. Townsend's client group are responsible  
23 media companies.

24 So I am assuming you would -- you people would be  
25 able to work something out on that point so that I could

1 have a proper record before me.

2 MS. TOWNSEND: Your Honor, this is Katie Townsend  
3 on behalf of the media intervenors. Just to be clear, this  
4 is the first throughout this entire process that we have  
5 heard anyone raise any concern with respect to any of the  
6 documents that were at issue here, about any --

7 THE COURT: Well, I understand, Ms. Townsend.

8 And --

9 MS. TOWNSEND: Okay.

10 THE COURT: -- frankly, I came into this hearing  
11 about 99 percent sure that I would grant your motion as to  
12 the privilege logs except for personally identifying  
13 information covered by 107(c).

14 But it could be met by the Sacklers' own motion to  
15 seal under 107(c) even if I directed these to be unsealed  
16 upon a proper review by them, which is really all that I'm  
17 asking to have happen at this point. And so, you know, I  
18 think that's just where we are.

19 And I have it hard to believe, put it differently,  
20 I find it hard to believe that any press account related to  
21 this case generally would be unduly delayed because  
22 privilege logs weren't provided, given everything else  
23 that's been provided as far as claims and defenses asserted  
24 by the parties that go right to the merits.

25 MS. TOWNSEND: Your Honor, I don't think --

1 MR. LEES: Your Honor, this is --

2 MS. TOWNSEND: Oh, I apologize. Go ahead.

3 MR. LEES: Your Honor, this is Alex Lees at  
4 Milbank for the Raymond Sackler family. I'm co-counsel to  
5 Mr. Joseph. I just wanted to make one observation of the  
6 facts so that the record is clear, which is that our  
7 position with respect to the right to redact counterparty  
8 names in the public versions of documents that was filed was  
9 made in our statement in response to the original motion to  
10 unseal filed by the press intervenors.

11 THE COURT: Yeah. No, I know --

12 MR. LEES: And --

13 THE COURT: -- it was. But it wasn't  
14 particularized. I didn't know who those people were, you  
15 know, what it was, you know. I mean, it -- whether they're  
16 current, whether they're past. It's just sort of a general  
17 statement. So it's fine as far as it goes, but it's just --  
18 you know, if -- as far as meeting a burden, it's just not  
19 there.

20 MR. LEES: Understood, Your Honor. We had  
21 intended to rely on the previous colloquy and ruling in the  
22 court. But I understand the point and we will address it in  
23 a more particularized way given the opportunity for further  
24 briefing.

25 Thank you.

1 THE COURT: Okay. All right.

2 Now, Ms. Townsend, you were going to say  
3 something, too.

4 MS. TOWNSEND: Your Honor, I was just going to say  
5 that I understand the predicament that you're in. I mean, I  
6 think we came into this -- the media intervenors came into  
7 this hearing very much of the view that the parties had not  
8 met their burden to demonstrate that this material to remain  
9 sealed precisely because they have not made a particularized  
10 showing.

11 THE COURT: Right.

12 MS. TOWNSEND: I think that to the Court -- we do  
13 not object to the Court giving the parties a reasonable  
14 opportunity to -- to giving the parties, including the media  
15 intervenors an opportunity to submit additional simultaneous  
16 briefing, and provided that the party -- to the extent that  
17 the parties are arguing that portions of these documents  
18 should remain sealed, that they do, in fact, make that  
19 particularized showing for the Court.

20 I recognize we could talk a little bit more about  
21 process. I am happy to defer to whatever Your Honor thinks  
22 is the right process, but I want it to be clear that to the  
23 extent the Court needs additional information and believes  
24 additional information be submitted for Your Honor to rule,  
25 we don't object to that approach.

1 THE COURT: Okay.

2 MR. HURLEY: Your Honor, it's Mitch Hurley.

3 THE COURT: Okay. I did just get -- I did just an  
4 email from the debtor's counsel that, I guess, has these  
5 documents attached.

6 MR. KAMINETZKY: Your Honor, we tried initially to  
7 just send it by email and it got bounced several times by  
8 the Court because of its size. So we had to set up this  
9 client link or whatever it's called. So now Your Honor  
10 should have it in a form.

11 But I don't -- I don't know if Your Honor wants to  
12 deal with this today because what we sent Your Honor is --

13 THE COURT: No. I will review it. I may just  
14 give the parties my ruling separately on this one. I mean,  
15 again, my chambers practice on motions to seal is to insist  
16 that I get the unredacted document and the redacted  
17 document. I look at them and I decide whether I think it's  
18 covered by 107 or not, 107(b) or not.

19 And I have the briefing on this. I have your  
20 arguments. I think I have the case law on it. We're just  
21 talking about 107(b) as far as Exhibits 137 and 123 are  
22 concerned. So I don't need any more briefing on that. And  
23 I may just rule on that before the next hearing.

24 MR. KAMINETZKY: That's fine, Your Honor. Let me  
25 just -- if you could just allow me to explain. What we sent

1 Your Honor was what we called transparent redactions in that  
2 you have the whole document, but we put --

3 THE COURT: Yeah.

4 MR. KAMINETZKY: -- red boxes around --

5 THE COURT: The redline.

6 MR. KAMINETZKY: Right.

7 THE COURT: The redline. I see that.

8 MR. KAMINETZKY: So that you know what it is that  
9 -- and we think that this falls -- everything Your Honor  
10 said. This is just a 107(b) and --

11 THE COURT: Right.

12 MR. KAMINETZKY: -- we think Mr. Lowne in the  
13 declaration that we submitted in connection with our papers,  
14 this one declaration that he explains what the basis is  
15 under 107(b) for the proposed few redactions on those two  
16 documents. And as far as the debtor is concerned, we'll --  
17 with respect to the privilege log we'll do what we said we  
18 would do. We would just -- we would redact PII and, you  
19 know, any personal identifying information like email  
20 addresses, and then just take a quick look to make sure  
21 there's nothing -- no 107(b) information in the subject  
22 line, and then just give us a week or two and we'll unseal  
23 that.

24 THE COURT: Okay. Well, as far as that's  
25 concerned, I think that -- I don't' think you're going to

1 have to have armies of people on it. I can't imagine a  
2 privilege log likely to have sensitive commercial  
3 information on it. But I understand you want to eyeball it  
4 for sure.

5 Okay. So I will adjourn the hearing on this  
6 motion on --

7 MR. HURLEY: Judge, may I --

8 THE COURT: There was just an update motion. So  
9 it's really one motion, although there are two motions on  
10 the calendar from the media parties to the next omnibus  
11 hearing.

12 It's unlikely that I will take additional oral  
13 argument. The parties are both represented by -- are all  
14 represented by capable counsel. And I will -- I know Ms.  
15 Townsend said supplemental briefing. I think actually it's  
16 incumbent upon the Sackler parties to submit their brief  
17 first and after consulting with the media parties about the  
18 safety issue, if that's still an issue and hopefully  
19 resolving that, also including for me, you know, specific  
20 documents, clean and redacted, that are at issue. I have a  
21 feeling that most of the entries won't be. And so I want to  
22 have the ones identified that are at issue specifically.

23 And then a reply brief can be filed by the media  
24 parties three days before the hearing.

25 DR. JOSHI: Your Honor --

1 MR. HURLEY: Your Honor, does that --

2 DR. JOSHI: Your Honor, I was granted by the Court  
3 in December a moment to speak about --

4 THE COURT: No. No. I want to continue on this  
5 matter. Does anyone have any more matters on the media  
6 motions?

7 MR. HURLEY: Your Honor, it's Mitch Hurley. Can I  
8 just make one point of clarification very briefly?

9 THE COURT: Sure.

10 MR. HURLEY: Okay. Mitch Hurley for the  
11 committee. The official committee takes no position on the  
12 unsealing of the privilege logs, Your Honor. We don't  
13 advocate for it. We don't oppose it.

14 I do want to be clear, though, that the exhibits  
15 we're talking about actually are not exclusively related to  
16 the log challenges motion. There are entries on those  
17 exhibits that we have identified as samples in connection  
18 with the exceptions motion as well.

19 I just wanted to make that clear for the record.

20 Thank you.

21 THE COURT: Well, when you say the exceptions  
22 motion -- I'm sorry. What two motions are you referring to?

23 MR. HURLEY: Sure. So the committee filed two  
24 motions to compel. One is referred to as the log challenges  
25 motion, which was a motion made -- based on ordinary

1 challenges to a privilege log. Third parties are present,  
2 you know, non-lawyers waiver, that sort of thing.

3 And then there's the other motion which is the  
4 exceptions motion based on the crime fraud and at issue  
5 exceptions --

6 THE COURT: Right. But they both go to --

7 MR. HURLEY: -- of these --

8 THE COURT: -- they both go to privilege issues.

9 MR. HURLEY: Correct.

10 THE COURT: And that's how I'm -- that's how I'm  
11 treating this even though there are two separate motions.  
12 They're both dealing with the admissibility or the -- I'm  
13 sorry, the require -- the requirement to produce --

14 MR. HURLEY: Correct.

15 THE COURT: -- what are asserted to be privilege  
16 documents.

17 MR. HURLEY: Correct. I'm just responding to Mr.  
18 Joseph had suggested that if we're able to resolve the log  
19 challenges motion --

20 THE COURT: Well, you would have to -- yeah. I  
21 understand, although again --

22 MR. HURLEY: Yeah.

23 THE COURT: -- that assumes that I think that  
24 there are limits and that those limits are within the facts  
25 beyond what is set forth in 107(b) to 107(a) of the

1 Bankruptcy Code.

2 MR. HURLEY: Understood.

3 THE COURT: So there you are.

4 I guess -- so I didn't set a date for the brief  
5 from the Sacklers or briefs from the two sides of the  
6 Sackler family. I would say when is -- can someone remind  
7 me when the February omnibus hearing is?

8 MR. JOSEPH: I believe it's February 17th, Your  
9 Honor.

10 THE COURT: All right. So the 14th would be the  
11 reply. I guess the 7th would be the date for the brief.

12 MR. JOSEPH: Thank you, Your Honor.

13 THE COURT: Okay. Or briefs if the two different,  
14 Side A and Side B want to file separate briefs.

15 Okay. Now someone was speaking up about some  
16 other matter. I think that is the end of today's calendar.  
17 But I think someone --

18 DR. JOSHI: Yes.

19 THE COURT: -- was raising his hand to speak.

20 DR. JOSHI: Yeah. Judge Drain, thank you for a  
21 time. My name is Dr. Jay Joshi. I filed amicus on behalf  
22 of my patients who are represented in some of the cases that  
23 have been aggregated.

24 I understand that we're turning towards the end so  
25 I will make this quick.

1                   First of all, I would like --

2                   THE COURT: No. No. Mr. Joshi, no, don't --

3                   wait. I'm going to interrupt you, Doctor.

4                   I thought that I had explained this to you in an  
5                   email. I'm going to explain it now again, and I apologize  
6                   if it wasn't clear before.

7                   When one wants to file an amicus pleading, two  
8                   things have to apply. First, there has to be a motion for  
9                   leave to file it; and, second, it has to apply; that is, the  
10                   underlying pleading has to apply to something that is before  
11                   the Court to decide.

12                   If the Court grants permission to file the amicus  
13                   pleading, it will consider it only in that context, i.e. it  
14                   is part of the record for the matter that the Court has  
15                   before it to decide. There is nothing before me on today's  
16                   calendar that pertains to your amicus pleading. There is no  
17                   motion to which that pleading would apply.

18                   So somehow you've gotten the impression that you  
19                   can pursue this matter today. That's simply not the case.  
20                   An amicus pleading is, as the name suggests, a pleading  
21                   filed by someone who as a friend to the Court wants to  
22                   elucidate and illuminate further than the parties have the  
23                   issues before the Court on a particular matter that the  
24                   Court has to decide. I don't have anything before me  
25                   relating to the document that you have filed.

1 DR. JOSHI: Okay. I understand, sir. I can  
2 probably send you emails that refute that, but out of  
3 respect for your time, sir, and respect for everybody else  
4 we can maybe take this offline, otherwise I can continue  
5 discussion. But I respect for the Court that --

6 THE COURT: No. There's nothing to discuss  
7 offline, sir. The calendar today had five matters on it,  
8 some of which had subparts. None of them pertained to the  
9 document that you have filed. Sometime in the future there  
10 may be an issue before me to decide that does pertain to it,  
11 at which point you should file a motion seeking leave for  
12 consideration of an amicus brief. But there's nothing  
13 before me today.

14 And I don't want there to be any more confusion on  
15 it. There's no more reason to talk to anyone in chambers  
16 about it, to anyone in the clerk's office or to me about it.  
17 I just want to be clear on that. Okay.

18 Again, courts decide specific things that are  
19 brought before them on a proper record with proper briefing  
20 and proper notice. They're not general forums for  
21 expressions of opinion. Those are, you know, the Boston  
22 Globe or Dow Jones or Reuters or a law review article. But  
23 that's not the Court's function.

24 So I think that does close the agenda for  
25 today's hearings. And I'll see you all at the omnibus date

1       or, actually, probably just hear you all at the omnibus date  
2       in February.

3               Okay. Anything else from anyone?

4               All right. Very well. Thank you, all.

5               MR. JOSEPH: Thank you, Your Honor.

6               MR. KAMINETZKY: Thank you.

7               (Whereupon these proceedings were concluded at  
8       1:20 PM)

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1 C E R T I F I C A T I O N

2

3 We, William J. Garling, Pamela A. Skaw, and Sherri L.

4 Breach, certify that the foregoing transcript is a true and  
5 accurate record of the proceedings.

6

7

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8 William J. Garling,

9 AAERT Certified Electronic Transcriber

10

11

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12 Pamela A. Skaw

13 AAERT Certified Electronic Transcriber

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16 Sherri L. Breach

17 AAERT Certified Electronic Transcriber

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